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THE HISTORY OF THE
VIETNAM WAR





560
No. 1732

UNITED STATES CIRCUIT COURT OF APPEALS

FOR THE NINTH CIRCUIT.

THE NORTHWESTERN STEAMSHIP COMPANY, LIMITED, Petitioner,

Appellant,

vs.

C. RANSOM, JOHN HANNAFIN, A. ARTAL, GUST ANDERSON, ERIK JOHNSON, SAM ATKINSON, WILLIAM LUNDBERG, J. L. PORTER, TOM BERG, JACOB OSTERHOLM, J. L. SAGE, JOHN BORLAND, J. R. MORELAND, LOUIS MARTIN, MATT MATTSON, WILLIAM R. PIERCE, H. A. BROADED, P. McCORMICK, CHAS. KELLY, FRANK HANNIGAN, ROASLIE PAPES, T. VANDENENK, F. C. AVERY, A. O. JOHNSON, JOHN SULLIVAN, J. ABOHDEN, EMIL LINDQUIST, FRANK SMITH, HADE ROARK, G. W. BELL, ROBAK POWELL, PAT REDMOND and EMIL STANK,

Appellees.

In the Matter of the Petition of THE NORTHWESTERN STEAMSHIP COMPANY, LIMITED (a Corporation), Owner of the Steamer "SANTA CLARA," an American Vessel for Limitation of Liability.

APOSTLES ON APPEAL.

Appeal from the United States District Court for the Western District of Washington, Northern Division.

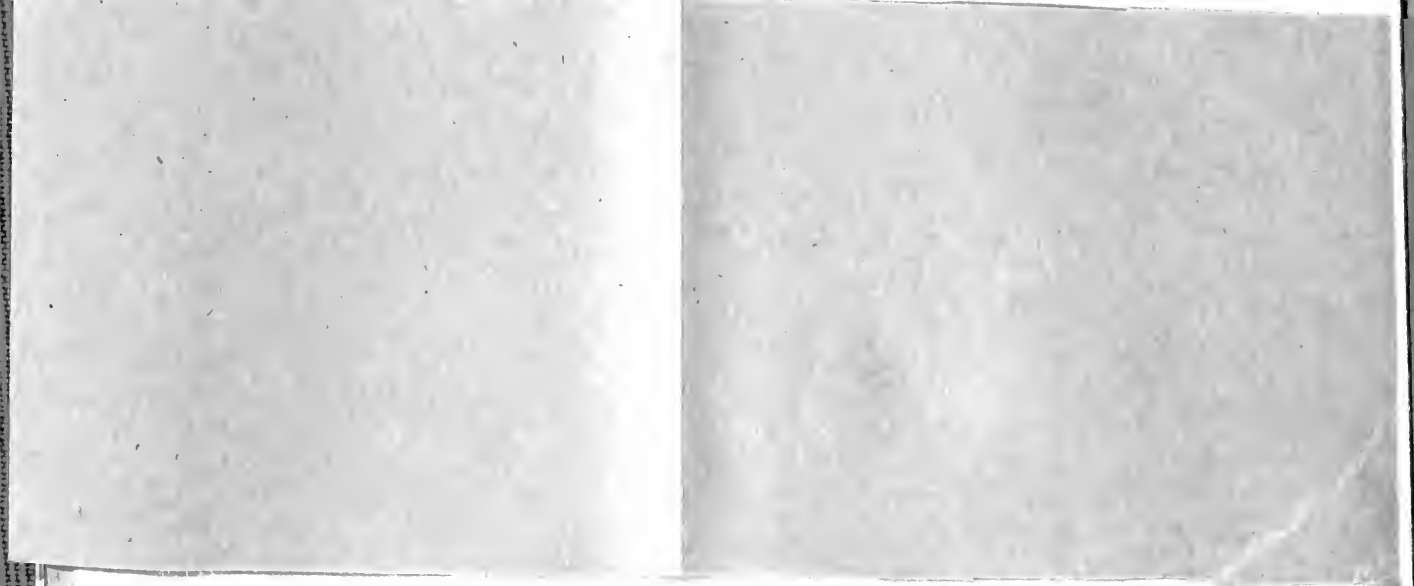
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Record of U. S. Circuit
Court of Appeals
560



UNITED STATES CIRCUIT COURT OF APPEALS

FOR THE NINTH CIRCUIT.

THE NORTHWESTERN STEAMSHIP COMPANY, LIMITED, Petitioner,

Appellant,

vs.

C. RANSOM, JOHN HANNAFIN, A. ARTAL, GUST ANDERSON, ERIK JOHNSON, SAM ATKINSON, WILLIAM LUNDBERG, J. L. PORTER, TOM BERG, JACOB OSTERHOLM, J. L. SAGE, JOHN BORLAND, J. R. MORELAND, LOUIS MARTIN, MATT MATTSON, WILLIAM R. PIERCE, H. A. BROADED, P. McCORMICK, CHAS. KELLY, FRANK HANNIGAN, ROASLIE PAPES, T. VANDENENK, F. C. AVERY, A. O. JOHNSON, JOHN SULLIVAN, J. ABOHDEN, EMIL LINDQUIST, FRANK SMITH, HADE ROARK, G. W. BELL, ROBAK POWELL, PAT REDMOND and EMIL STANK,

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur. Title heads inserted by the Clerk are enclosed within brackets.]

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*In the District Court of the United States for the
Western District of Washington, Northern Di-
vision.*

IN ADMIRALTY—No. 3658.

In the Matter of the Petition of the NORTHWEST-
ERN STEAMSHIP COMPANY, LTD. (a
Corporation), Owner of the Steamer
“SANTA CLARA,” an American Vessel, for
a Limitation of Liability.

Names and Addresses of Counsel.

BOGLE & SPOONER, 610 Central Building,
Seattle, Washington, and
IRA A. CAMPBELL, Esq., 324 Colman Building,
Seattle, Washington.

Proctors for Petitioner and Appellant.

WILLIAM MARTIN, Esq., and J. L. BALDWIN,
Esq., 204 to 210 Collins Building, Seattle, Wash-
ington,

Proctors for Claimants and Contestants.

*In the United States Circuit Court of Appeals for
the Ninth Circuit.*

No. —.

In the Matter of the Petition of the NORTH-
WESTERN STEAMSHIP COMPANY,
LTD. (a Corporation), Owner of the Steamer
“SANTA CLARA,” an American Vessel, for
a Limitation of Liability.

NORTHWESTERN STEAMSHIP COMPANY,
LIMITED.

Petitioner and Appellant.

Notice of Filing of Apostles on Appeal and of Appellant's Appearance.

To C. Ransom, John Hannifin, A. Artal, Gust Anderson, Erik Johnson, Sam Atkinson, William Lundberg, J. L. Porter, Tom Berg, Jacob Osterholm, J. L. Sage, John Borland, J. R. Moreland, Louis Martin, Matt Mattson, William R. Pierce, H. A. Broaded, P. McCormick, Chas. Kelly, Frank Hannigan, Roaslie Papes, T. Vandenenk, F. C. Avery, A. O. Johnson, John Sullivan, J. Abohden, Emil Lindquist, Frank Smith, Hade Roark, G. W. Bell, Robak Powell, Pat Redmond and Emil Stank, and William Martin and Julius Baldwin, Their Proctors:

Please take notice that the Northwestern Steamship Company, Limited, petitioner and appellant in the above-entitled cause, filed the Apostles on Appeal in said cause, entered its appearance and the appearance of its proctors, W. H. Bogle, C. P. Spooner and Ira A. Campbell, with the above-entitled court and the clerk thereof on the 16th day of June, 1909, at San Francisco in the State of California.

Dated, Seattle, Washington, June 18, 1909.

W. H. BOGLE,
C. P. SPOONER,
IRA A. CAMPBELL,

Proctors for Northwestern Steamship Company,
Limited, Petitioner and Appellant.

Service of the within Notice admitted this 18th day of June, 1909.

WM. MARTIN and
J. L. BALDWIN,
Proctors for Above-named Claimants.

[Endorsed]: No. 1732. In the United States Circuit Court of Appeals for the Ninth Circuit. In the Matter of the Petition of the Northwestern Steamship Company, Ltd., a Corporation, Owner of the Steamer "Santa Clara," an American Vessel, for a Limitation of Liability. Northwestern Steamship Company, Limited, Petitioner and Appellant. Notice of Filing of Apostles on Appeal and Appellant's appearance. Filed Jun. 21, 1909. F. D. Monckton, Clerk. W. H. Bogle, C. P. Spooner, and Ira A. Campbell, Proctors for Appellant, 323 Colman Bldg., Seattle. Wash.

In the United States District Court for the Western District of Washington, Northern Division.

No. 3658.

In the Matter of the Petition of the NORTHWESTERN STEAMSHIP COMPANY, LTD. (a Corporation), Owner of the Steamer "SANTA CLARA," an American Vessel, for a Limitation of Liability.

Statement.

Time of commencement of suit—March 6, 1908.

Names of Parties.

Northwestern Steamship Company, Limited, petitioner, C. Ransom, John Hannofin, A. Artal, Gust Anderson, Eril Johnson, Sam Atkinson, William Lundberg, J. L. Porter, Tom Berg, Jacob Osterholm, J. L. Sage, John Borland, J. R. Moreland, Louis Martin, Matt Mattson, William R. Pierce H. A.

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Broaded, P. McCormick, Chas. Kelly, Frank Hannigan, Roaslie Papes, T. Vandenenk, F. C. Avery, A. O. Johnson, John Sullivan, J. Abohden Emil Lindquist, Frank Smith, Hade Roark, G. W. Bell, Robak Powell, Pat Redmond and Emil Stank, Claimants.

Dates when Pleadings were Filed.

Petition—March 6th, 1908.

Objections of claimants to jurisdiction, and Motion to dismiss petition—March 9th, 1908.

Order overruling objections—March 9th, 1908.

Petitioner's objections to allowance of claims—July 3d, 1908.

Answer—October 26th, 1908.

Petitioner's objections to allowance of claims—October 26th, 1908.

On motion of petitioner, three appraisers were appointed, on March 11th, 1908, to appraise the value of the Steamer "Santa Clara" and her freight pending at the termination of her voyage leaving Uyak, Alaska, on October 6th, 1906, and arriving at Seattle, Washington, on October 21st, 1906. Said appraisers, after having taken and subscribed to an oath on March 14th, 1908, before R. M. Hopkins, Clerk of the United States District Court for the Western District of Washington, filed the report of their appraisal on October 16th, 1908, and thereafter on October 19th, 1908, said Court entered an order directing the petitioner to file a stipulation with good and sufficient surety, in the sum of \$75,774.15, for payment into Court of said appraised value of said steamer "Santa Clara" and her freight pending, or any portion thereof whenever the same should be

ordered by the Court, together with interest and costs. In compliance with said order, the petitioner, on October 23d, 1908, filed with said Court, a stipulation, with the American Surety Company of New York, as surety, after the sufficiency of the same had been approved by the Court. Pursuant to order of said Court, entered March 23d, 1908, a monition was issued on March 24th 1908, to the United States Marshal, commanding him to cite all persons claiming any loss, damage or injury arising out of or occasioned by, that certain voyage of the steamer "Santa Clara," leaving Uyak, Alaska, on October 6th, 1908, and terminating at Seattle, Washington, on October 21st, 1906, to appear before said Court and make due proof of their respective claims before W. D. Totten, Commissioner of said Court, before June 29th, 1908, at 10 o'clock A. M., and to appear and answer the allegations of the petition. Said monition was served on William Martin and Julius L. Baldwin, attorneys for all known claimants and pursuant to order of said Court entered March 23d, 1908, public notice of said monition was given by publishing notice thereof in a daily paper once a day for fourteen days, and thereafter once a week until June 29th, 1908, and by posting copies of said monition in three public places, to wit: At the United States Court, United States Postoffice, and King County Courthouse, Seattle, Washington.

Trial.

On December 14th, 1908, said cause was argued by the respective parties before the Honorable C. H.

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Hanford, United States District Court Judge, and was on said date submitted to the Court for decision.

Reference to Commissioner.

On March 25th, 1908, said Court appointed W. D. Totten a Commissioner, before whom all the claims pursuant to the monition, should be presented, and on said date ordered that proof of said claims and contest thereof, if any should be made before said Commissioner, and that said petitioner should have the right to contest its liability for all or any of said claims independently of the limitation of liability claimed. Said proof of said claims and contest thereof was taken before said Commissioner, and thereafter returned by him into said Court and filed on October 26th, 1908.

Interlocutory Decree.

Interlocutory decree entered July 13th, 1908.

Final Decree.

Final decree entered April 21, 1909.

Notice of Appeal.

Notice of appeal filed, May 20th, 1909.

*In the United States District Court for the Western
District of Washington, Northern Division.*

IN ADMIRALTY—No. 3658.

In the Matter of the Petition of the NORTHWEST-
ERN STEAMSHIP COMPANY, LTD. (a
Corporation), Owner of the Steamer
“SANTA CLARA,” an American Vessel, for
a Limitation of Liability.

Petition for Limitation of Liability.

To the Hon. C. H. HANFORD, Judge of the U. S.
District Court for the Western District of
Washington.

The petition of the Northwestern Steamship Com-
pany, Ltd., a corporation, during all times herein-
after mentioned owner of the American Steamer
“Santa Clara,” in a matter of limitation of liability,
alleges as follows:

I.

That your petitioner, Northwestern Steamship
Company, Ltd., is a corporation duly organized and
existing under and by virtue of the laws of the State
of Nevada, and doing business and maintaining an
office within this district.

II.

That your petitioner was during all times herein-
after mentioned the owner of the steamer “Santa
Clara” an American vessel of 1,208 net tons register
being officially numbered 77,427, and during said time
was operated by your petitioner as a common carrier

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of freight and passengers between the ports of Puget Sound and Alaska.

III.

That on or about the 6th day of October, 1906, your petitioner's steamer "Santa Clara" left the port of Uyak, Alaska, for the port of Seattle, State of Washington, where she arrived on or about the 21st day of October, 1906, after having touched at the ports of Seward, Valdes, and other ports and places en route.

IV.

That upon leaving said port of Uyak, said steamer "Santa Clara" had on board a large quantity of freight and a large number of passengers, and thereafter took on board other passengers at the ports of Seward and Valdes and other ports, and said steamer transported to the port of Seattle from said ports 358 passengers.

V.

Thereafter during the months of March and April, 1907, some twenty-five persons claiming to have been passengers on said steamer on said voyage; commenced separate actions against your petitioner in the Superior Court of the State of Washington, in and for the County of King, wherein said suits are now pending, claiming damages in the sum of five hundred dollars (\$500.00) each, alleging said damages to have arisen from the following causes:

"That the defendant (petitioner herein) failed neglected and refused to provide the plaintiff (one of said passengers) with a suitable berth or with any berth whatsoever, or to furnish the plaintiff with the

proper place to sleep of with proper bedclothing or with any bedclothing whatsoever, and that the defendant placed the plaintiff in one of the steerage or freight departments of said vessel, and that the quarters furnished to the plaintiff were in a damp, cold condition and were allowed so to remain during the entire voyage. That the said vessel carried a large number of Chinese and Japanese fishermen in the said steerage department, and that said steerage department was overcrowded and carried a larger number of passengers than allowed by law, and that the plaintiff was required to sleep upon the deck and in the passageways of said vessel, and that the said vessel was kept in an unclean and unsanitary condition during the said voyage, and that the toilet-room in the said vessel was allowed to become and remain in an unclean and unsanitary condition, and that the water therefrom was allowed to overflow and run upon and over the floor of said passageways upon which the plaintiff was required to sleep and that the plaintiff was required to remain in the said steerage department with no place to sit down, exercise or rest, and where the air was foul and close. That the said vessel carried on board a small and insufficient quantity of provisions, wholly insufficient to feed the number of passengers carried on board of said vessel on the said voyage, and that the plaintiff was required to eat below in the steerage on a couple of planks which were dirty and filthy and were allowed so to remain during the entire voyage. That the said steerage department and freight-room that the plaintiff was required to remain in was crowded with

10 *The Northwestern Steamship Company, Ltd.,*

other passengers similarly situated, and was in a dirty, foul and filthy condition when the said vessel went to sea and was allowed so to remain during the entire voyage, and that no provision was made for keeping said department clean or in a fit or suitable condition in which for a person to remain. That demand was made upon the officers of the said vessel by the plaintiff for the accommodations, food, berth and conveniences promised and agreed upon as aforesaid. That the food furnished the plaintiff was prepared and served in an unclean, dirty and slovenly manner, and was unclean, dirty and unwholesome and wholly unfit for consumption and it could only be eaten by the plaintiff when suffering from extreme hunger, and was furnished in wholly insufficient quantities, and that the meat furnished to the plaintiff was in a decayed condition and unwholesome and wholly unfit to eat, and that the plaintiff was wholly unable to eat the same, and that the said vessel did not carry a sufficient supply of provisions for the said voyage, as required by law, or such a supply as is customary to be carried by similar vessels upon such a voyage.”

VI.

That the total amount of damages for which suits have already been brought amounts to the sum of twelve thousand five hundred dollars (\$12,500.00), and in one of the aforesaid actions a verdict has been rendered and judgment entered thereon in the sum of three hundred dollars (\$300.00), and if liability exists on the part of your petitioner for said claims, your petitioner believes that actions upon other

claims, exceeding the value of said steamer at the termination of said voyage and her freight pending, may be brought; that said freight pending was the sum of fifteen thousand seven hundred seventy-four and 15/100 dollars (\$15,774.15), to wit: Two thousand eight hundred fifty-one and 15/100 dollars (\$2,851.15) for freight, and twelve thousand nine hundred and twenty-three dollars (\$12,923) for passenger fares.

VII.

That the aforesaid actions commenced against your petitioner as owner of said steamer "Santa Clara," and now pending in the Superior Court of the State of Washington for King County, have been instituted by the following persons, to wit: T. Vandernenk Cause No. 58,650; Jacob Osterhold, No. 58,651; Frank Smith, No. 58,648; John Borland, No. 58,649; Gust Anderson, No. 58,652; Pat Redmond, No. 58,653; F. C. Avery, No. 58,654; H. A. Broaded, No. 58,655; Chas. Kelley, No. 58,656; J. R. Moreland, No. 58,657; Matt Matterson, No. 58,658; P. McCormick, No. 58,659; Erick Johnson, No. 58,660; O. A. Johnson, No. 58,661; Emil Stank, No. 58,662; Wm. R. Pierce, No. 58,663; C. Ranson, No. 58,664; John Hannafin, No. 58,665; Emil Lindquist, No. 58,666; A. Artal, No. 58,668; Hade Roark, No. 58,667; Wm. Lundberg, No. 56,185; J. L. Sage, No. 56,183; John Sullivan, No. 56,182; and Sam Atkinson, No. 56,186.

VIII.

That your petitioner does not admit any liability for said alleged damages, and desires to contest the

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same, and claims exemption therefrom under Secs. 4283 to 4285, U. S. Revised Statutes, on the grounds and for the reason that said steamer was at all times seaworthy, and well and sufficiently supplied with good wholesome food and that the same was served at all times during said voyage in clean, well-cooked condition and in quantity sufficient for all the passengers on said steamer; that all of said passengers on said steamer had good, clean berths, except a small number from the port of Valdes, who took passage upon said steamship well knowing that all of the berths were taken and that if they did not desire to go their passage money would be refunded, and well knowing that if they did go they would have to take, and agreed to accept, such accommodations as could be given them; and that for such of said passengers as did not have regular berths, equal or better accommodations were furnished them in the smoking-room, saloon and social halls of said steamer; that the sleeping, dining and other quarters on said steamer were well ventilated and were at all times on said voyage kept in a clean and sanitary condition; that said steamer did not have passengers in excess of the number allowed by her certificate of inspection.

IX.

That if said alleged damage was done, the same was done, occasioned, or incurred without the privity or knowledge of your petitioner.

X.

That said steamer "Santa Clara" is now within the jurisdiction of this Honorable Court.

XI.

That all and singular the premises are true and within the admiralty and maritime jurisdiction of the United States and of this Honorable Court.

Wherefore, your petitioner prays that this Court may be pleased to enter an order appointing three appraisers and causing due appraisement, by said appraisers, to be had of the amount or value of your petitioner's interest in said steamer "Santa Clara" and her freight pending at the termination of said voyage; and

That this Court may be pleased to enter a further order for a stipulation, executed by your petitioner, with good and sufficient sureties, for the payment of said appraised value of said steamer and her freight pending into this Court whenever the same shall be ordered; and

That upon the giving of said stipulation by your petitioner with sureties, a monition may be issued by this Court against all persons claiming damages for any such damage or injury, citing them to appear before this Court and make due proof of their respective claims at or before a time to be named in said monition, not less than three months from the issuance thereof, and that public notice of such monition shall be given as in other cases, and such further notice reserved through the postoffice, or otherwise, as the Court may direct; and,

That this Court may be pleased to designate a Commissioner, before whom such claims should be presented in pursuance of said monition, to make report thereof to this Court; and that your peti-

tioner may be at liberty to contest its liability for all said alleged loss, damage and injury, independently of the limitation of liability claimed; and,

That this Court may be pleased to enter an order restraining further prosecution of all of the aforesaid actions commenced and now pending in the Superior Court of the State of Washington, in and for King County, and the Supreme Court of the State of Washington, and of all or any suits against your petitioner in respect of any such claim or claims, except before said commissioner and in this proceeding; and that if upon the coming in of the report of said commissioner and its confirmation, it should appear that your petitioner and the steamer "Santa Clara" were not liable for said alleged damage or injury, it may be so decreed; and,

That if this Court, should decree that any person or persons were entitled to maintain claims against your petitioner or said steamer "Santa Clara," it shall decree that the liability of your petitioner shall in no event exceed the value of the steamer "Santa Clara" and her freight pending at the termination of said voyage, and that your petitioner shall be forever exempt from all further liabilities in the premises, and that the moneys secured to be paid into Court, as aforesaid, shall be divided, after payment of all just costs and expenses, pro rata amongst the several claimants in proportion to the amount of their respective claims duly proved and confirmed, as aforesaid, saving, however, to all parties any priority to which they may be legally entitled; and,

That this Court may be pleased to grant such other and further relief as shall be deemed meet and equitable in the premises.

NORTHWESTERN STEAMSHIP COM-
PANY, LTD.

[Seal]

By D. H. JARVIS,
Vice-President.

BOGLE & SPOONER,
IRA A. CAMPBELL,
Proctors for Petitioner.

United States of America,
State of Washington,
County of King,—ss.

D. H. Jarvis, being first duly sworn, on oath deposes and says: That he is the Vice-President of the Northwestern Steamship Company, Ltd., a corporation, petitioner herein, and as such Vice-President is authorized to verify this petition; that he does verify this petition for and on behalf of this corporation; that he has read the foregoing Petition, knows the contents thereof, and believes the same to be true.

D. H. JARVIS.

Subscribed and sworn to before me this 6th day of March, A. D. 1908.

[Seal]

IRA A. CAMPBELL,
Notary Public in and for the State of Washington,
Residing at Seattle, Washington.

[Endorsed]: Petition for Limitation of Liability.
Filed in the U. S. District Court, Western Dist. of
Washington. Mar. 6, 1908. R. M. Hopkins, Clerk.
W. D. Covington, Deputy.

*In the District Court of the United States for the
Western District of Washington, Northern Di-
vision.*

No. 3658.

In the Matter of the Petition of the NORTHWEST-
ERN STEAMSHIP COMPANY, LTD.,
for a Limitation of Liability.

Appearance [of Proctors for Petitioner].

To the Clerk of the Above-entitled Court:

You will please enter our appearance as Proctors for Petitioner Northwestern S. S. Co., Ltd., in the above-entitled cause; and service of all subsequent papers, except writs and process, may be made upon said Northwestern S. S. Co., Ltd., by leaving the same with

IRA A. CAMPBELL and
BOGLE & SPOONER,

Office Address: 323 Colman Bldg., Seattle, Wash-
ington.

[Endorsed]: Appearance. Filed in the U. S. Dis-
trict Court, Western Dist. of Washington. Mar. 6,
1908. R. M. Hopkins, Clerk. W. D. Covington,
Deputy.

*In the United States District Court for the Western
District of Washington, Northern Division.*

IN ADMIRALTY—No. 3658.

In the Matter of the Petition of the NORTHWEST-
ERN STEAMSHIP COMPANY, LTD.
(a Corporation), Owner of the Steamer
“SANTA CLARA,” an American Vessel, for
a Limitation of Liability.

**Notice [of Motion for Appointment of Appraisers,
etc.].**

Mr. Wm. Martin and Julius L. Baldwin, Attorneys
for Sam Atkinson, et al.

Please take notice, that the undersigned proctors for the Northwestern Steamship Company, Ltd., petitioner herein, will apply to the above-entitled Court on Monday, March 9th, 1908, at 10 A. M., for an order appointing three appraisers and causing due appraisement to be had of the steamer “Santa Clara,” etc.; and for a further order, restraining further prosecution of all of the actions now pending in the Superior Court of the State of Washington in and for King County, arising out of claims for failure to properly transport passengers on said steamer “Santa Clara” from ports of Alaska to Seattle, in the month of October, 1906; which applications for said orders will be made upon the petition for limitation of liability filed herein, a copy of which is herewith served upon you.

18 *The Northwestern Steamship Company, Ltd.,*

Dated at Seattle, Washington, this 6th day of March, 1908.

BOGLE & SPOONER,

IRA A. CAMPBELL,

Proctors for Petitioner.

Service of the within notice and copy of petition by delivery of a copy to the undersigned is hereby acknowledged this 6th day of March, 1908.

WM. MARTIN and

JULIUS L. BALDWIN,

Attorneys for Sam Atkinson, et al.

[Endorsed]: Notice. Filed in the U. S. District Court, Western Dist. of Washington. Mar. 9, 1908. R. M. Hopkins, Clerk. W. D. Covington, Deputy.

In the United States District Court for the Western District of Washington, Northern Division.

IN ADMIRALTY—No. 3658.

In the Matter of the Petition of the NORTHWESTERN STEAMSHIP COMPANY, LTD. (a Corporation), Owner of the Steamship "SANTA CLARA," an American Vessel, for a Limitation of Liability.

Objections to the Jurisdiction of the Court and Motion [to Quash, etc.].

Come now T. Vandernenk, Jacob Osterholm, Frank Smith, John Borland, Gust Anderson, Pat Redmond, F. C. Avery, H. A. Broaded, Charles Kelly, J. R. Moreland, Matt Matterson, P. McCormick, Erick Johnson, O. A. Anderson, Emil Stank,

Wm. R. Pierce, C. Ransom, John Hannafin, Emil Lindquist, A. Artal, Hade Roark, Wm. Lundberg, J. L. Sage, John Sullivan and Sam Atkinson, by their proctor, William Martin, and appearing specially for this motion and object to the Court issuing a restraining order against them, or either of them, enjoining or restraining them from prosecuting their several actions to judgment in the Superior Court of King County, Washington, and move:

1.

That the notice of an application for restraining order served upon proctor for Sam Atkinson et al. be quashed and dismissed and the application be denied upon the ground and for the reasons that the said Court has no jurisdiction to issue a restraining order in the above actions against Sam Atkinson et al. enjoining and restraining them from prosecuting their actions to final judgment against said petitioner.

2.

To dismiss the petition herein upon the grounds and for the reasons that the Court has no jurisdiction to hear and determine the matters therein alleged or grant the relief therein prayed for against Sam Atkinson et al.

3.

To strike said petition and dismiss the above-entitled action upon the grounds and for the reason that the said petition does not state facts sufficient to entitle the petitioner to a limitation of liability, as therein prayed for, or at all, or to an injunction enjoining or restraining said Sam Atkinson et al.

from prosecuting said actions in said Superior Court of the State of Washington to final judgment; and is insufficient and uncertain and cannot be made the basis for adjudging, litigating and determining the claims of the said Sam Atkinson et al. in this Court or in any other Court than that in which the same are now pending.

4.

That this Court has no jurisdiction to hear or determine the claims of the said Sam Atkinson et al. against the said petitioner Northwestern Steamship Company, Ltd.

5.

To dismiss the said petition upon the grounds and for the reasons that the same is not brought in good faith, but is brought for the sole purpose of trying to compel said Sam Atkinson et al. to litigate and determine their said claims in this Court instead of the Superior Court of the State of Washington for King County.

WM. MARTIN,

Proctor for Said Sam Atkinson et al.

Copy of within objections to jurisdiction received this 9th day of March, 1908.

BOGLE & SPOONER,

IRA A. CAMPBELL,

Proctors for Petitioner.

[Endorsed]: Objections and Motion of Sam Atkinson, et al. Filed in the U. S. District Court, Western Dist. of Washington. Mar. 9, 1908. R. M. Hopkins, Clerk. W. D. Covington, Deputy.

*In the United States District Court for the Western
District of Washington, Northern Division.*

IN ADMIRALTY—No. 3658.

In the Matter of the Petition of the NORTHWEST-
ERN STEAMSHIP COMPANY, LTD.
(a Corporation), Owner of the Steamship
“SANTA CLARA,” an American Vessel, for
a Limitation of Liability.

Affidavit of William Martin.

United States of America,
Western District of Washington,—ss.

William Martin, being first duly sworn, on oath deposes and says, that he is the attorney for the following parties, who are prosecuting actions against the Northwestern Steamship Company for damages in the sum of \$500.00 each in the Superior Court of the State of Washington for King County, to wit: T. Vandernenk, Jacob Osterholm, Frank Smith, John Borland, Gust Anderson, Pat Redmond, F. C. Avery, H. A. Boraded, Charles Kelly, J. R. Moreland, Matt Matterson, P. McCormick, Erick Johnson, O. A. Johnson, Emil Stank, Wm. R. Pierce, C. Ranson, John Hannafin, Emil Lindquist, A. Artal, Hade Roark, Wm. Lundberg, J. L. Sage, John Sullivan and Sam Atkinson; that said causes of action arose from a voyage of said vessel “Santa Clara” leaving Uyak and Valdes, Alaska, on or about the 6th day of October, 1906, and arriving at Seattle, on or about the 21st day of October, 1906, for the reason that said vessel upon said voyage was in a wholly

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unseaworthy condition; that her boilers were leaky, weak, and part of the time but a small amount of steam could be kept up on one boiler; that said vessel was leaky; that her hull was defective; and at times it kept and consumed most all of the steam of the one boiler of said vessel to keep the pumps going and keep the said vessel from sinking; that the unseaworthiness of the said vessel was known to the owners, or could have been ascertained by reasonable diligence prior to entering upon said voyage, and was well known to the officers of the said vessel prior to leaving Valdes, Alaska, for Seattle, Washington, as affiant is informed and states the facts to be; that by reason of the unseaworthy condition of the said vessel, which required from the 6th day of October until the 21st day of October, 1906, to reach Seattle from Valdes, which ordinarily requires but four or five days. That the vessel was overcrowded; that no place was provided for said passengers in which to sleep; that no sufficient supply of provisions was carried aboard said vessel for said voyage, and what they did have were wholly insufficient, unwholesome and unfit to eat; that said vessel was kept in a dirty, unsanitary condition; that dogs, Chinamen and Japanese mingled with said white passengers in said steerage department of said vessel; that said parties have a good and meritorious cause of action against said steamship company upon their several suits in said Superior Court.

That since the said voyage commencing the 6th day of October, 1906, said Steamship "Santa Clara" has made a number of voyages, as affiant is in-

formed, to Alaska and said ports, and between the same ports since the voyage upon which the causes of action of said parties arose, and but recently undertook a voyage to Valdes, Alaska, from Seattle, Washington, and before the vessel got out of the Straits of Juan De Fuca, by reason of the hull being so rotten and defective was in such a leaky condition that it was with great difficulty that the said vessel was able to return to Seattle; and that affiant is informed and believes that said vessel at the present time has no value except for junk, and is in a wholly unseaworthy condition; that affiant is informed that when said vessel finally returned to Seattle with great difficulty that the same was in a sinking condition; and would have sunk had it not been for the relief given said vessel after reaching Seattle; that prior to the said last voyage undertaken, as stated, said vessel, as affiant is informed, had been repaired and notwithstanding such repairs, was in such a bad condition that it came near foundering upon the said recent voyage, which in all probability it would have done had it been able to get further to sea, and would have drowned all the passengers. Affiant further states that if the Court has jurisdiction that it is the duty of the Court to cause an investigation to be made of this vessel to the end that better protection may be afforded to the lives of passengers traveling between the ports of Alaska and Seattle upon the same.

WM. MARTIN.

24 *The Northwestern Steamship Company, Ltd.,*

Subscribed in my presence and sworn to before me by the said William Martin this 9th day of March, 1908.

[Seal]

THOS. SOUTAR,

Notary Public in and for the State of Washington,
Residing at Seattle.

Copy of within affidavit received this 9th day of March, 1908.

BOGLE & SPOONER

IRA A. CAMPBELL,

Proctors for Petitioner.

[Endorsed]: Affidavit of William Martin. Filed in the U. S. District Court, Western Dist. of Washington. Mar. 9, 1908. R. M. Hopkins, Clerk. W. D. Covington, Deputy.

*In the United States District Court for the Western
District of Washington, Northern Division.*

IN ADMIRALTY—No. 3658.

In the Matter of the Petition of the NORTHWESTERN STEAMSHIP COMPANY, LTD. (a Corporation), Owner of the Steamer "SANTA CLARA," an American Vessel, for a Limitation of Liability.

Order [Overruling Motion to Dismiss, Permitting Sam Atkinson et al. to Interpose a Joint Answer.]

This cause came on for hearing upon the motion of Sam Atkinson et al., to dismiss the petition herein, and objecting and appearing specially for that purpose; and the Court, after hearing argument and be-

ing advised in the premises, overruled said motion, to which said ruling said Sam Atkinson et al., objectors, are allowed an exception.

It is further ordered that the said Sam Atkinson et al., may interpose a joint answer herein to the petition, and have a period of ten days therefor.

Done in open court this 9th day of March, 1908.

C. H. HANFORD,

Judge.

[Endorsed]: Order. Filed in the U. S. District Court, Western Dist. of Washington. Mar. 9, 1908. R. M. Hopkins, Clerk. A. N. Moore, Deputy.

In the District Court of the United States for the Western District of Washington, Northern Division.

IN ADMIRALTY—No. 3658.

In the Matter of the Petition of the NORTHWESTERN STEAMSHIP COMPANY, LTD. (a Corporation), Owner of the Steamer "SANTA CLARA," an American Vessel, for a Limitation of Liability.

Restraining Order.

It appearing to this Court that a petition has been filed herein by the Northwestern Steamship Company, Ltd., a corporation, for a limitation of liability against any and all claims arising out of the transportation of passengers and freight by the steamer "Santa Clara" from the ports of Uyak, Seward, Valdes, and other Alaskan ports, to the port of

26 *The Northwestern Steamship Company, Ltd.,*

Seattle, on a voyage leaving Uyak on October 6, 1906, and arriving at Seattle on October 21, 1906; and,

It further appearing that said petitioner claims the benefit of the exemption provided by sections 4283 to 4285 U. S. Revised Statutes, and further desires to contest any and all liability for any and all loss or damage, or injury arising on said voyage on the grounds set forth in the petition herein; and,

It further appearing that said petitioner has prayed this Court for an order appointing three appraisers to appraise the value of said steamer and her freight pending at the termination of said voyage, and has offered to file with this Court a stipulation, with good and sufficient securities, for the payment of said appraised value of said steamer and her freight pending into this Court whenever the same shall be ordered; and,

It further appearing that there are now pending in the Superior Court of the State of Washington, for King County, twenty-five actions against the petitioner, praying for damages for injuries alleged to have been received on said voyage by the plaintiffs therein, and that there may be other actions instituted by other passengers on said voyage; and,

It further appearing that a restraining order should issue, restraining further prosecution of all of the aforesaid actions, and all or any suits against the petitioner in respect of any such claim or claims, except before the Commissioner in said Limitation of Liability proceeding; and,

The Court being fully advised in the premises:

Now, therefore, it is hereby ordered, adjudged and decreed, that any and all actions against the North-

western Steamship Company, Ltd., and the steamer "Santa Clara," and her freight, pending at the termination of her voyage from Uyak to Seattle on October 6th to October 21, 1906, be, and they are hereby restrained, except the prosecution of said claims before the Commissioner of this Court, to be appointed, before whom said claims are to be heard; and,

It is further ordered, adjudged and decreed, that the Superior Court of the State of Washington, in and for the County of King, be, and it is hereby restrained for any and all further prosecution or procedure in the following causes of action, to wit:

T. Vandernenk v. Northwestern Steamship Co., Ltd.,
Cause No. 58,650;

Jacob Osterholm v. Northwestern Steamship Co.,
Ltd., Cause No. 58,651;

Frank Smith v. Northwestern Steamship Co., Ltd.,
Cause No. 58,648;

John Borland v. Northwestern Steamship Co., Ltd.,
Cause No. 58,649;

Gust Anderson v. Northwestern Steamship Co., Ltd.,
Cause No. 58,652;

Pat Redmond v. Northwestern Steamship Co., Ltd.,
Cause No. 58,653;

F. C. Avery v. Northwestern Steamship Co., Ltd.,
Cause No. 58,654;

H. A. Broaded v. Northwestern Steamship Co., Ltd.,
Cause No. 58,655;

Chas. Kelley v. Northwestern Steamship Co., Ltd.,
Cause No. 58,656;

- 28 *The Northwestern Steamship Company, Ltd.*,
J. R. Moreland v. Northwestern Steamship Co., Ltd.,
Cause No. 58,657;
Matt Matterson v. Northwestern Steamship Co., Ltd.,
Cause No. 58,658;
P. McCormick v. Northwestern Steamship Co., Ltd.,
Cause No. 58,657;
Erick Johnson v. Northwestern Steamship Co., Ltd.,
Cause No. 57,660;
O. A. Johnson v. Northwestern Steamship Co., Ltd.,
Cause No. 58,661;
Emil Stank v. Northwestern Steamship Co., Ltd.,
Cause No. 58,662;
Wm. R. Pierce v. Northwestern Steamship Co., Ltd.,
Cause No. 58,662;
C. Ranson v. Northwestern Steamship Co., Ltd.,
Cause No. 58,664;
John Hannafin v. Northwestern Steamship Co., Ltd.,
Cause No. 58,665;
Emil Lindquist v. Northwestern Steamship Co., Ltd.,
Cause No. 58,666;
A. Artal v. Northwestern Steamship Co., Ltd., Cause
No. 58,668;
Hade Roark v. Northwestern Steamship Co., Ltd.,
Cause No. 58,667;
Wm. Lundberg v. Northwestern Steamship Co., Ltd.,
Cause No. 56,185;
J. L. Sage v. Northwestern Steamship Co., Ltd.,
Cause No. 56,183;
John Sullivan v. Northwestern Steamship Co., Ltd.,
Cause No. 56,182; and

Sam Atkinson v. Northwestern Steamship Co., Ltd.,
Cause No. 56,186.

Entered this 11th day of March, A. D., 1908.

C. H. HANFORD,

Judge.

[Endorsed]: Restraining Order. Filed in the U. S. District Court, Western Dist. of Washington. Mar. 11, 1908. R. M. Hopkins, Clerk. A. N. Moore, Deputy.

*In the District Court of the United States for the
Western District of Washington, Northern
Division.*

IN ADMIRALTY—No. 3658.

In the Matter of the Petition of the NORTHWEST-
ERN STEAMSHIP COMPANY, LTD. (a
Corporation), Owner of the Steamer "SANTA
CLARA," an American Vessel, for a Limita-
tion of Liability.

Order Appointing Appraisers.

It appearing to this Court that a petition has been
filed herein by the Northwestern Steamship Com-
pany, Ltd., a corporation, for a Limitation of Liabil-
ity against any and all claims arising out of the trans-
portation of passengers and freight by the steamer
"Santa Clara" from the ports of Uyak, Seward, Val-
des, and other Alaskan ports, to the port of Seattle,
on a voyage leaving Uyak on October 6, 1906, and
arriving at Seattle on October 21, 1906; and,

It further appearing that said petitioner claims
the benefit of the exemption provided by sections

4283 to 4285 U. S. Revised Statutes, and further desires to contest any and all liability for any and all loss or damage, or injury arising on said voyage, on the grounds set forth in the petition herein;

It further appearing that said petitioner has prayed this Court for an order appointing three appraisers to appraise the value of said steamer and her freight pending at the termination of said voyage, and has offered to file with this Court a stipulation with good and sufficient securities, for the payment of said appraised value of said steamer and her freight pending into this Court whenever the same shall be ordered; and,

The Court being fully advised in the premises:

Now, therefore, It is hereby ordered that Jas. Carol and Fred E. Sander and Henry K. Hall, be, and they are hereby appointed appraisers, and, after being duly sworn by the Clerk of this Court, said appraisers are to make due appraisal of the value of the steamer "Santa Clara" and her freight pending at termination of her voyage leaving Uyak, Alaska, on October 6, 1906, and arriving at Seattle, Washington, on October 21, 1906; and after having made due appraisal, said appraisers are hereby ordered to report the same, in writing, under oath, to this Court.

Entered this 11th day of March, A. D. 1908.

C. H. HANFORD,
Judge.

[Endorsed]: Order Appointing Appraisers. Filed in the U. S. District Court, Western Dist. of Wash-

ington. Mar. 11, 1908. R. M. Hopkins, Clerk. A. N. Moore, Dep.

*In the District Court of the United States for the
Western District of Washington, Northern
Division.*

IN ADMIRALTY—No. 3658.

In the Matter of the Petition of the NORTHWEST-
ERN STEAMSHIP COMPANY, LTD. (a
Corporation), Owner of the Steamer "SANTA
CLARA," an American Vessel, for a Limita-
tion of Liability.

Notice of Appraisement.

To Sam Atkinson et al., and to Wm. Martin and
Julius L. Baldwin, their Attorneys.

Please take notice, that the appraisers appointed in
the above-entitled cause to appraise the steamer
"Santa Clara" and her freight pending at the term-
ination of that certain voyage ending at Seattle,
Washington, on the 21st day of October, 1906, will
proceed to Quartermaster Harbor, on the steamer
"Indianapolis," and will leave Seattle at 9:00 A. M.
on the 14th day of March, 1908, and thence proceed
to Quartermaster Harbor, and then and there enter
upon the appraisement of said steamer "Santa
Clara," and continue the same from time to time
until said appraisement shall be completed.

Dated at Seattle, this 13th day of March, A. D.
1908.

BOGLE & SPOONER,
IRA A. CAMPBELL,
Proctors for Petitioner.

[Endorsed]: Notice of Appraisement. Filed in the U. S. District Court, Western Dist. of Washington. Mar. 14, 1908. R. M. Hopkins, Clerk. A. N. Moore, Deputy.

In the District Court of the United States for the Western District of Washington, Northern Division.

IN ADMIRALTY—No. 3658.

In the Matter of the Petition of the NORTHWESTERN STEAMSHIP COMPANY, LTD. (a Corporation), Owner of the Steamer "SANTA CLARA," an American Vessel, for a Limitation of Liability.

Oath of Appraisers.

United States of America,
State of Washington,
County of King,—ss.

Fred E. Sander, James Carroll and H. K. Hall being first duly sworn, on oath, depose and say:

That they are the appraisers named and appointed in that certain order, entered on the 6th day of March, 1908, by the Honorable C. H. Hanford, Judge of the above-entitled court, in the above-entitled cause, to make an appraisement of the steamer "Santa Clara" and her freight pending at the termination of that certain voyage ending at Seattle, Washington, on the 21st day of October, 1906;

That as such appraisers they will well and truly perform all of the duties of their said office, and will

make a full and complete report of said appraisal, under oath, to the above-entitled court, as directed in said order.

F. E. SANDER.

JAS. CARROLL.

HENRY K. HALL.

Subscribed and sworn to before me this 14th day of March, A. D. 1908.

R. M. HOPKINS,

Clerk, U. S. Dist. Court, Western Dist. of Washington.

[Endorsed]: Oath of Appraisers. Filed in the U. S. District Court, Western Dist. of Washington, Mar. 14, 1908. R. M. Hopkins, Clerk. W. D. Covington, Deputy.

[Report of Appraisers.]

In the District Court of the United States, for the Western District of Washington, Northern Division.

IN ADMIRALTY—No. 3658.

In the Matter of the Petition of the NORTHWESTERN STEAMSHIP COMPANY, LTD. (a Corporation), Owner of the Steamer "SANTA CLARA," an American Vessel, for a Limitation of Liability.

APPRAISEMENT.

To the Hon. C. H. HANFORD, Judge of the above-entitled Court:

United States of America,
State of Washington,
County of King.

James Carroll, Fred E. Sander and Henry K. Hall being first duly sworn, on oath depose and say:

That they are respectively the James Carroll, Fred E. Sander and Henry K. Hall who were heretofore appointed appraisers in the above-entitled action to appraise the value of the steamer "Santa Clara" and her freight pending at the termination of that certain voyage ending at Seattle, Washington, on the 21st day of October, 1906;

That they have caused to be made the aforesaid appraisement of said steamer "Santa Clara" and her freight pending, and do hereby appraise the value of said steamer "Santa Clara" at the termination of that certain voyage commencing at Uyak, Alaska, on the 6th day of October, 1906, and terminating at Seattle, Washington on the 21st day of October, 1906, at the sum of sixty thousand dollars (\$60,000.00);

That said appraisers further appraise the gross freight pending at the termination of said voyage on said 21st day of October, 1906, at the sum of fifteen thousand seven hundred seventy-four and 15/100 dollars (\$15,774.15) as follows: Two Thousand eight hundred fifty-one and 15/100 dollars (\$2,851.15) for freight, and twelve thousand nine hundred and twenty-three dollars (\$12,923.00) for passenger fares.

FRED E. SANDER.

JAS. CARROLL.

HENRY K. HALL.

Subscribed and sworn to before me this 16th day of March, A. D. 1906.

COLIN O. RADFORD,
Notary Public in and for the State of Washington,
Residing at Seattle, Wn.

[Endorsed]: Report of Appraisers. Filed in the U. S. District Court, Western Dist. of Washington. Mar. 16, 1908. R. M. Hopkins, Clerk. W. D. Covington, Deputy.

In the District Court of the United States, for the Western District of Washington, Northern Division.

IN ADMIRALTY—No. 3658.

In the Matter of the Petition of the NORTHWESTERN STEAMSHIP COMPANY, for Limitation of Liability.

Stipulation of Libellant for Costs.

Whereas, a petition for limitation of liability was filed in this Court on the 6th day of March, 1908, by Northwestern Steamship Company, Ltd., a corporation, for a limitation of liability on its interest in the S. S. "Santa Clara" and her freight pending, for the reasons and causes in the said petition mentioned, and the said Northwestern Steamship Company, Ltd., petitioner, and American Surety Company of New York, surety, the parties hereto, hereby consenting and agreeing that in case of default or contumacy on the part of the petitioner or its surety, execution may issue against their goods, chattels, and land for the sum of two hundred and fifty dollars.

Now, therefore, it is hereby stipulated and agreed, for the benefit of whom it may concern, that the stipulators, undersigned shall be and is bound in the sum of two hundred and fifty dollars, conditioned that the Northwestern Steamship Co., Ltd., petitioner above named shall pay all such costs as shall be awarded against it by this Court, or in case of appeal, by the Appellate Court.

Taken and acknowledged before me this 13th day of March, 1908.

NORTHWESTERN STEAMSHIP CO.,
LTD.,

By D. H. JARVIS,
Vice-President.

AMERICAN SURETY COMPANY OF
NEW YORK,

By R. D. WELDON,
Resident Vice-President.

[Seal] Attest: EDWARD J. LYONS,
Resident Asst. Secretary.

[Seal] T. F. MERRITT,

Notary Public in and for the State of Washington,
Residing at Seattle, Washington.

[Endorsed]: Stipulation of Libelant for Costs.
Filed in the U. S. District Court, Western Dist. of
Washington. Mar. 16, 1908. R. M. Hopkins, Clerk.

*In the District Court of the United States for the
Western District of Washington, Northern Di-
vision.*

IN ADMIRALTY—No. 3658.

In the Matter of the Petition of the NORTHWEST-
ERN STEAMSHIP COMPANY, LTD. (a
Corporation), Owner of the Steamer
“SANTA CLARA,” an American Vessel, for
Limitation of Liability.

**Notice [of Motion to Require Petitioner to File
Bond].**

To Sam Atkinson and Other Claimants, and to Wm.
Martin and Julius L. Baldwin, their Attorneys.

Notice is hereby given, that the undersigned will apply to the above-entitled court on Thursday morning, March 19, 1908, at 10 A. M., for an order directing the Northwestern Steamship Company, Ltd., petitioner in the above-entitled action, to file a good and sufficient bond for the payment of the sum of \$75,774.15, in the above-entitled court, in the above-entitled action; said sum being the value of said steamer “Santa Clara” and her freight pending at the termination of that certain voyage ending at Seattle, Washington, on the 21st day of October, 1906, as appraised by the appraisers heretofore appointed by the above-entitled court in the above-entitled action.

38 *The Northwestern Steamship Company, Ltd.,*

Dated at Seattle, Washington, this 17th day of March, A. D. 1908.

BOGLE & SPOONER,
IRA A. CAMPBELL,
Attorneys for Petitioner.

[Endorsed]: Notice. Filed in the U. S. District Court, Western Dist. of Washington. Mar. 19, 1908. R. M. Hopkins, Clerk. A. N. Moore, Deputy.

[Order Approving Appraisement, Requiring Petitioner to File Stipulation, etc.]

In the United States District Court for the Western District of Washington, Northern Division.

IN ADMIRALTY—No. 3658.

In the Matter of the Petition of the NORTHWESTERN STEAMSHIP COMPANY, LTD. (a Corporation), Owner of the Steamer "SANTA CLARA," an American Vessel, for Limitation of Liability.

ORDER TO FILE STIPULATION.

It appearing to this Court that the appraisers heretofore appointed by this Court, in the above-entitled cause, to appraise the value of the steamer "Santa Clara" and her freight pending at the termination of that certain voyage ending at Seattle, Washington, on October 21st, 1906, after subscribing to a written oath before the honorable clerk of this Court to well and truly perform their duties as appraisers, have appraised said steamer "Santa

Clara," and her freight pending at the termination of that certain voyage ending at Seattle, Washington, on October 21st, 1906, and, as by said order directed, have returned to this court, under oath, their said appraisement of said steamer "Santa Clara" and her freight pending; and,

It further appearing from said appraisement that said steamer "Santa Clara" and her freight pending at the termination of that certain voyage ending at Seattle, Washington, on October 21st, 1906, were of the value of \$75,774.15; and,

The Court being duly advised in the premises:

Now, therefore, it is hereby ordered, adjudged and decreed, that said appraisement be, and the same is hereby approved, and the petitioner herein, the Northwestern Steamship Company, Ltd., be, and it is hereby directed to file with this Court a stipulation, executed by said petitioner, with good and sufficient surety, in the sum of \$75,774.15; for the payment into this Court of said appraised value of said steamer "Santa Clara" and her freight pending, or any portion thereof, whenever the same shall be ordered by this Court.

Entered this 19th day of March, A. D. 1908.

C. H. HANFORD,

Judge.

[Endorsed]: Order to File Stipulation. Filed in the U. S. District Court, Western Dist. of Washington. Mar. 19, 1908. R. M. Hopkins, Clerk. A. N. Moore, Deputy.

In the United States District Court for the Western District of Washington, Northern Division.

IN ADMIRALTY—No. 3658.

In the Matter of the Petition of the NORTHWESTERN STEAMSHIP COMPANY, LTD. (a Corporation), Owner of the Steamer "SANTA CLARA," an American Vessel, for Limitation of Liability.

Notice [of Motion for Issuance of a Monition, etc.].

To Sam Atkinson and Other Claimants, and to Wm. Martin and Julius L. Baldwin, their Attorneys.

Notice is hereby given, that the undersigned will apply to the above-entitled court, at its courtroom at the corner of Fourth Avenue and Marion Street, in the city of Seattle, Washington, on Monday, March 23, 1908, at 10 A. M., or as soon thereafter as counsel can be heard:

First: For an order directing the issuance of a monition to be issued by said Court against all persons claiming damages, or any damage or injury arising out of the voyage of the steamer "Santa Clara," leaving Uyak, Alaska, on October 6th, 1906, and terminating at Seattle, Washington, on October 26th, 1906, citing them to appear before said Court and make due proof of their respective claims at or before a time to be fixed in said monition, not less than three months from the issuance thereof.

Secondly. For an order directing public notice of said monition to be given, as in other cases, and

through the postoffice, or otherwise, as the Court may direct.

Third: For an order appointing a Commissioner, before whom such claims shall be presented, in pursuance of said monition, with directions to said Commissioner to report the same to said Court, and giving said petitioner permission to contest its liability for all the alleged loss, damage and injury independently of the limitation of liability claimed in the petition, heretofore filed in said Court.

You are further notified, that said petitioner will submit for the approval of said Court, a stipulation in the sum of \$75,774.15. and upon the approval thereof said petitioner will cause said stipulation to be filed with said Court, as directed by its order heretofore entered on the 19th day of March, 1908.

Dated at Seattle. Washington, this 20th day of March, 1908.

BOGLE & SPOONER,
IRA A. CAMPBELL,

Proctors for Northwestern Steamship Company,
Ltd., Petitioner.

Service of the within notice by delivery of a copy to the undersigned is hereby acknowledged this 20 day of March, 1908.

WM. MARTIN,

Attorney Sam Atkinson et al.

[Endorsed]: Notice. Filed in the U. S. District Court, Western Dist. of Washington. Mar. 23, 1908. R. M. Hopkins, Clerk. A. N. Moore, Deputy.

*In the United States District Court for the Western
District of Washington, Northern Division.*

IN ADMIRALTY—No. 3658.

In the Matter of the Petition of the NORTHWEST-
ERN STEAMSHIP COMPANY, LTD. (a
Corporation), Owner of the Steamer
“SANTA CLARA,” an American Vessel, for
Limitation of Liability.

Stipulation.

Whereas, the Northwestern Steamship Company, Ltd., a corporation, has heretofore commenced an action in the above-entitled court for limitation of liability against all claims for damages arising out of that certain voyage of said petitioner’s steamer “Santa Clara,” commencing at Uyak, Alaska, on October 6th, 1906, and terminating at Seattle, Washington, on October 21st, 1906; and,

Whereas, this Court has heretofore appointed James Carroll, Fred E. Sander and Henry K. Hall appraisers to appraise the value of said steamer “Santa Clara” and her freight pending at the termination of said voyage; and,

Whereas, said appraisers, after having subscribed to a written oath before the honorable clerk of this Court, to well and truly perform their duties as said appraisers, have caused to be made an appraisalment of said steamer “Santa Clara” and her freight pending, and have returned to this court their appraisalment, under oath, appraising the value of said steamer and her freight pending at \$75,774.15; and,

Whereas, this Court has heretofore entered an order directing said petitioner to file with this Court a stipulation, with good and sufficient surety, in the sum of \$75,774.15, for the payment into this Court of said appraised value of said steamer "Santa Clara" and her freight pending, or any portion thereof, whenever the same shall be ordered:

Now, therefore, it is hereby stipulated and agreed, for the benefit of whom it may concern, that the stipulators, undersigned, and each of them, is hereby bound in the sum of \$75,744.15, conditioned that the petitioner above named, Northwestern Steamship Company, Ltd., shall, when ordered by the above-entitled court, pay into the registry thereof the aforesaid appraised value of said steamer "Santa Clara" and her freight pending on October 21st, 1906, with interest at the rate of six per cent (6%) per annum from the date hereof, or any part thereof.

NORTHWESTERN STEAMSHIP COM-
PANY,

[Seal]

By D. D. JARVIS,
Vice-President.

AMERICAN SURETY COMPANY OF
NEW YORK,

By LIVINGSTON B. GILMAN,
Resident Vice-President.

[Seal]

Attest: EDWARD J. LYONS,
Resident Assistant Secretary.

44 *The Northwestern Steamship Company, Ltd.,*

Taken and acknowledged this 23d day of March, 1908, before me.

[Seal] IRA A. CAMPBELL,
Notary Public in and for the State of Washington,
Residing at Seattle, Wn.

The sufficiency of the foregoing Stipulation is hereby approved.

Dated this 23d day of March, A. D. 1908.

C. H. HANFORD,
Judge.

[Endorsed]: Stipulation. Filed in the U. S. District Court, Western Dist. of Washington. Mar. 23, 1908. R. M. Hopkins, Clerk. A. N. Moore, Deputy.

In the District Court of the United States for the Western District of Washington, Northern Division.

IN ADMIRALTY—No. 3658.

In the Matter of the Petition of the NORTHWESTERN STEAMSHIP COMPANY, LTD. (a Corporation), Owner of the Steamer "SANTA CLARA, an American Vessel, for a Limitation of Liability.

Order Directing Issuance of Monition, etc.

It appearing to this Court that a petition has been filed herein by the Northwestern Steamship Co., Ltd., a corporation for a Limitation of Liability against any and all claims arising out of the transportation of passengers and freight by the steamer

“Santa Clara” from the ports of Uyak, Seward, Valdes, and other Alaskan ports, to the port of Seattle, on a voyage leaving Uyak on October 6, 1906, and arriving at Seattle on October 21, 1906; and,

It further appearing that said petitioner claims the benefit of the exemption provided by Sections 4283 to 4285 of the U. S. Rev. St., and further desires to contest any and all liability for any and all loss, damage or injury arising on said voyage on the grounds set forth in said petition; and,

It further appearing that this Court has heretofore appointed three appraisers to appraise the value of said steamer “Santa Clara” and her freight pending at the termination of said voyage ending at Seattle on the 21st day of October, 1906, and that said appraisers, after subscribing to a written oath before the clerk of this court, caused to be made said appraisement, and thereafter returned to this Court their said appraisement, under oath, wherein they appraised the value of said steamer and her freight pending at 75,774.15; and,

It further appearing that said appraisement has been approved, and that said petitioner has filed with this Court, pursuant to order thereof, a stipulation, with good and sufficient surety, in the sum of \$75,774.15, after approval thereof by this Court; and,

It further appearing that a monition should issue as in such cases made and provided; and,

The Court being fully advised in the premises:

Now, therefore, it is hereby ordered, adjudged and decreed, that a monition issue under hand and

seal of this Court against all persons claiming damages or injury arising out of the voyage of the steamer "Santa Clara," leaving Uyak, Alaska, on October 6, 1906, and arriving at Seattle, Washington, on October 21, 1906, citing them to appear before this Court on or before the 29th day of June, 1908, and make due proof of their claims, or otherwise be forever barred; and,

It is further ordered, adjudged and decreed that notice of said motion be given by posting true and correct copies thereof on the bulletin boards at the United States Postoffice, the United States Court Building, at the corner of Fourth Ave., and Marion St., and the King County Courthouse, all in the City of Seattle, King County, Washington, and that further notice of said motion be given by publishing notice thereof in the "Post-Intelligencer," a daily paper published in the city of Seattle, State of Washington, once a day for 14 days, and thereafter once a week until said 29th day of June, 1908.

Entered this 23d day of March, 1908.

C. H. HANFORD,

Judge.

To which order Sam Atkinson et al., by their proctor, Wm. Martin, except and their exception is allowed.

C. H. HANFORD,

Judge.

[Endorsed]: Order Directing Issuance of Motion. Filed in the U. S. District Court, Western Dist. of Washington. Mar. 23, 1908. R. M. Hopkins, Clerk. A. N. Moore, Deputy.

[Monition.]

Western District of Washington,—ss.

The President of the United States of America
to the Marshal of the United States for
[Seal] the Western District of Washington,
Greeting:

Whereas, a petition hath been filed in the United States District Court for the Western District of Washington, by the Northwestern Steamship Company, Ltd., a corporation, owner of the steamer "Santa Clara," for a limitation of liability concerning any loss, damage or injury arising out of, or occasioned by, that certain voyage of the steamer "Santa Clara," leaving Uyak, Alaska, on October 6th, 1906, and terminating at Seattle, Washington, on October 21st, 1906, for the reasons and causes in said petition mentioned, and praying for a monition by the Court in that behalf to be made, and that all persons claiming damage for any such loss may be cited to appear before the Court and make due proof of their respective claims, and all proceedings being had, that if it shall appear that said petitioner is not liable for any such loss, damage or injury, it may be so finally decreed by the Court; and,

Whereas, said Court has caused said steamer and her freight pending at the termination of said voyage to be appraised, and said appraisers have returned their appraisement to said Court appraising said steamer and her freight pending at \$75,774.15;

48 *The Northwestern Steamship Company, Ltd.,*

and said petitioner has filed with said Court a stipulation in the sum of \$75,774.15; and,

Whereas, said Court has entered an order, directing said monition to issue:

You are therefore hereby commanded to cite all persons claiming any loss, damage or injury arising out of, or occasioned by, that certain voyage of the steamer "Santa Clara," leaving Uyak, Alaska, on October 6th, 1906, and terminating at Seattle, Washington, on October 21st, 1906, to appear before said Court and make due proof of their respective claims before W. D. Totten, a Commissioner of the United States District Court for the Western District of Washington, Northern Division, at his office, room 653, New York Building, corner of Second Avenue and Cherry Street, in the city of Seattle, county of King, State of Washington, before June 29th, 1908, at 10 o'clock in the forenoon of said day, and you are also commanded to cite such claimants to appear and answer the allegations of the petition herein, on or before the said last-named date, or within such further time as the Court may grant, and to have and recover such relief as may be due.

And for what you have done in the premises, do you make return to this Court, together with this writ.

Witness, the Hon. C. H. HANFORD, Judge of said Court, at the City of Seattle, in the Northern Division of the Western District of Washington, this 24th day of March, in the year of our Lord one thou-

sand nine hundred and eight, and of our Independence the one hundred and thirty-second.

R. M. HOPKINS,
Clerk.

IRA A. CAMPBELL,
BOGLE & SPOONER,
Proctors for Petitioner.

RETURN FOR SERVICE OF WRIT.

I hereby certify and return that I served the annexed Monition on William Martin, personally, at Seattle, County of King, Western District of Washington, on the 24th day of March, 1908; and that I posted a certified copy of the Monition at the King County courthouse, at the U. S. Courthouse and at the postoffice in the city of Seattle, on the 24th day of March, 1908.

Dated March 24, 1908.

C. B. HOPKINS,
United States Marshal.
By Fred M. Lathe,
Deputy.

FEES:

Service of Writ.....	\$2.00
Posting 3 Notices.....	.90
Mileage	12
	<hr/>
	\$3.02

[Endorsed]: Monition. Filed in the U. S. District Court, Western Dist. of Washington. Mar. 25, 1908. R. M. Hopkins, Clerk. A. N. Moore, Deputy.

*In the District Court of the United States in and for
the Western District of Washington, Northern
Division.*

IN ADMIRALTY—No. 3658.

In the Matter of the Petition of the NORTHWEST-
ERN STEAMSHIP COMPANY, LTD. (a
Corporation), Owner of the Steamer "SANTA
CLARA," an American Vessel, for a Limita-
tion of Liability.

Order of Reference.

It appearing to this Court that a petition has been filed herein by the Northwestern Steamship Company, Ltd., a corporation, for a limitation of liability against any and all claims arising out of the transportation of passengers and freight by the steamer "Santa Clara" from the ports of Uyak, Seward, Valdes, and other Alaskan ports, to the port of Seattle, on a voyage leaving Uyak on the 6th day of October, 1906, and arriving at Seattle on Oct. 21, 1906; and,

It further appearing that said petitioner claims the benefit of the exemption provided by sections 4283 and 4285 of the U. S. Rev. St., and further desires to contest any and all liability for any and all loss, damage and injury arising on said voyage on the grounds set forth in said petition; and,

It further appearing that this Court has heretofore appointed three appraisers to appraise the value of said steamer "Santa Clara" and her freight pending at the termination of said voyage ending at

Seattle, on the 21st day of October, 1906, and that said appraisers, after subscribing to a written oath before the Clerk of this Court, caused to be made said appraisement, and thereafter returned to this Court their said appraisement, under oath, wherein they appraised the value of the said steamer and her freight pending at \$75,774.15; and,

It further appearing that said appraisement has been approved, and that said petitioner has filed with this Court, pursuant to order thereof, a stipulation, with good and sufficient surety, in the sum of \$75,774.15, after approval thereof by this Court; and,

It further appearing that an order of this Court has been entered directing that a monition shall issue under hand and seal of this Court against all persons claiming damages or injuries arising out of the voyage of the steamer "Santa Clara" leaving Uyak, Alaska, on October 6, 1906, and terminating at Seattle, Washington, on October 21, 1906, citing them to appear before this Court on or before the 29th day of June, 1908, and make due proof of their claims; or otherwise be forever barred and,

The Court being fully advised in the premises:

Now, therefore, it is hereby ordered, adjudged and decreed that W. D. Totten be, and he is, hereby appointed a Commissioner from this Court before whom all of said claims pursuant to said monition shall be presented; and,

Be it further ordered that proof of said claims and the contest thereof, if any, shall be made before said Commissioner as prescribed by the rules and practice of this Court, and that said petitioner shall

52 *The Northwestern Steamship Company, Ltd.,*

have the right to contest its liability for all or any of said claims independently of the limitation of liability claimed.

Entered in open court this 23d day of March, 1908.

C. H. HANFORD,
Judge.

To which order Sam Atkinson et al., by their proctor, Wm. Martin, except and their exception is allowed.

C. H. HANFORD,
Judge.

Service of the within order by delivery of a copy to the undersigned is hereby acknowledged this 23 day of Mar., 1908.

WM. MARTIN,
Attorney Sam Atkinson et al.

[Endorsed]: Order of Reference. Filed in the U. S. District Court, Western District of Washington. Mar. 23, 1908. R. M. Hopkins, Clerk. A. N. Moore, Deputy.

*In the District Court of the United States for the
Western District of Washington, Northern Di-
vision.*

IN ADMIRALTY—No. 3658.

In the Matter of the Petition of the NORTHWEST-
ERN STEAMSHIP COMPANY, LTD.,
Owner of the Steamship "SANTA CLARA,"
an American Vessel, for a Limitation of Lia-
bility.

Order [Requiring Petitioner to Submit Passenger List, etc.].

This cause coming on for hearing on the application of Sam Atkinson et al. for an order requiring the petitioner herein to produce all the passenger tickets and passenger list on the voyage of the steamship "Santa Clara" referred to in the petition herein, together with the certificate of inspection under which said vessel was operated upon said voyage and the log-book for said voyage before the commissioner appointed herein, and submit the same to the attorney for Sam Atkinson et al. for inspection, and the Court being advised in the premises grants the said application.

It is therefore ordered, considered and decreed that the petitioner, the Northwestern Steamship Company, submit the passenger list and crew list on the voyage of the steamship "Santa Clara" referred to in the petition herein commencing at Uyak, Alaska, on or about the 6th day of October, 1906, and terminating at Seattle, Washington, on or about the 19th day of October, 1906, and the certificate of inspection and log-book for said voyage, and produce the same before the Hon. William D. Totten, commissioner herein.

Done in open court this 27th day of April, 1908.

C. H. HANFORD,

Judge.

Copy of within order received this 27 day of April, 1908.

IRA A. CAMPBELL,

Proctor for Petitioner.

[Endorsed]: Order to Produce Passenger List. Filed in the U. S. District Court, Western Dist. of Washington. Apr. 27, 1908. R. M. Hopkins, Clerk. A. N. Moore, Deputy.

In the District Court of the United States in and for the Western District of Washington, Northern Division.

No. 3658.

In the Matter of the Petition of the NORTHWESTERN S. S. CO., Owner of the Am. S. S. "SANTA CLARA," for a Limitation of Liability.

Order Fixing Fees of Appraisers.

It appearing to this Court that the appraisers heretofore appointed in the above-entitled action have made due appraise of said steamship "Santa Clara" and her freight pending as in said order of appointment directed, and that in making said appraisement appraisers, Fred E. Sander and James Carroll, were engaged one day and Appraiser D. K. Hall was engaged two days; and,

The Court being fully advised in the premises:

Now, therefore, it is hereby ordered that the compensation of Fred E. Sander and James Carroll for services rendered as appraisers of the steamship "Santa Clara" and her freight pending be and it is hereby fixed at \$20.00 each, and that the compensation of D. K. Hall for like services be and the same is hereby fixed at \$35.00.

Entered this 28th day of April, 1908.

C. H. HANFORD.

[Endorsed]: Order Fixing Compensation of Appraisers. Filed in the U. S. District Court, Western Dist. of Washington. Apr. 28, 1908. R. M. Hopkins, Clerk. A. N. Moore, Deputy.

In the United States District Court for the Western District of Washington, Northern Division.

IN ADMIRALTY—No. 3658.

In the Matter of the Petition of the NORTHWESTERN STEAMSHIP COMPANY, LTD. (a Corporation), Owner of the Steamer "SANTA CLARA," an American Vessel, for a Limitation of Liability.

Petitioner's Objections to Allowance of Claims.

Comes now the petitioner herein, the Northwestern Steamship Company, Ltd., and objects to the allowance of the claims in the above-entitled cause of C. Ranson, John Hannafin, A. Artal, Gust Anderson, Erik Johnson, Sam Atkinson, William Lundberg, J. L. Porter, Tom Berg, Jacob Osterholm, J. L. Sage, John Borland, J. R. Moreland, Louis Martin, Matt Mattson, William R. Pierce, H. A. Broaded, P. McCormick, Chas. Kelly, Frank Hannigan, Rosalie Papes, T. Vandenenk, F. C. Avery, A. O. Johnson, John Sullivan, J. Abohden, Emil Lindquist, Frank Smith, Hade Roark, C. W. Bell, Robak Powell, Pat Redmond and Emil Stank, upon the grounds and for the reasons that said steamer "Santa Clara" was at the time of the commencement of said voyage, to wit, on or about the 6th day of

October, 1906, and at all times thereafter, in seaworthy condition and was well and sufficiently supplied with good, wholesome food, and the same was served at all times during said voyage in a clean and well cooked condition and in quantities for all the passengers on said steamer; that all of said passengers on said steamer had good, clean berths, except a small number from the Port of Valdes, who took passage upon said steamer well knowing that all of the berths were taken and that if they did not desire to go their passage money would be refunded, and well knowing if they did go they would have to take, and agreed to accept, such accommodations as would be given them, and for such passengers as did not have regular berths, equal or better accommodations were furnished them in the saloon and social hall of said steamer; that the sleeping, dining and other quarters on said steamer were well ventilated, and were at all times on said voyage kept in a clean and sanitary condition; that the steamer did not have passengers in excess of the number allowed by her certificate of inspection.

In further support of its objections to the allowance of said claims, petitioner herein denies each and every of the allegations of the further answer of said answering claimants, alleged and set forth on pages 2, 3 and 4 of said claimants' answer to the petition herein, except that portion of said further answer which alleges and makes part thereof that portion of paragraph V of the petition, commencing with the 18th line and closing with the 25th line of said page

2 of said petition, which portion of said paragraph V of said petition, petitioner admits to be true.

NORTHWESTERN STEAMSHIP COMPANY, LTD.,

[Seal]

By D. H. JARVIS,
Secretary.

BOGLE & SPOONER,
IRA A. CAMPBELL,
Proctors for Petitioner.

State of Washington,
County of King,—ss.

D. H. Jarvis, being first duly sworn, on oath deposes and says: That he is the secretary of the Northwestern Steamship Company, Ltd., a corporation, petitioner herein, and as such officer is authorized to make this verification for and on behalf of said company; that as such officer he makes this verification for and on behalf of said company; that he has read the foregoing objections, knows the contents thereof, and believes the same to be true.

D. H. JARVIS.

Subscribed and sworn to before me this 3d day of July, A. D. 1908.

[Seal]

F. T. MERRITT,
Notary Public in and for the State of Washington,
Residing at Seattle, Wn.

Service of the within objections by delivery of a copy to the undersigned is hereby acknowledged this 3d day of July, 1908.

WM. MARTIN,
Per J. L. B.,
Attorney for Claimant.

58 *The Northwestern Steamship Company, Ltd.,*

Service of a copy of the within objection acknowledged on this 3d day of July, 1908.

WM. D. TOTTEN,
U. S. Commissioner.

[Endorsed]: Petitioner's Objections to Allowance of Claims. Filed in the U. S. District Court, Western Dist. of Washington. July 3, 1908. R. M. Hopkins, Clerk.

*In the District Court of the United States for the
Western District of Washington, Northern Division.*

Affidavit of Publication [of Monition].

State of Washington,
County of King,—ss.

A. P. Sawyer, being first duly sworn, deposes and says: That he is and was at all the times herein mentioned Secretary of the Post-Intelligencer Company, which during all of said times was and is a corporation engaged in business as owner, printer and publisher of "The Seattle Post-Intelligencer," a daily newspaper printed in the City of Seattle in the County of King in the State of Washington; that the same is a newspaper of general circulation in said city, county and state, and that the annexed notice was published in said paper and not in a supplement thereof, and is a true copy of said notice as it was published in each regular and entire issue of said paper, for 26 times commencing on the 25th day of March, 1908, and ending on the 28th day of June, 1908, viz.: March 25, 26, 27, 28, 29, 30, 31,

April 1, 2, 3, 4, 5, 6, 7, 12, 19, 26, May 3, 10, 17, 25, 31, June 7, 14, 21, 28, 1908, and that the said newspaper was regularly published and distributed to its subscribers during all of said period.

[Seal]

A. P. SAWYER.

Subscribed and sworn to before me this 29th day of June, 1908.

WALTER B. FOUNTAINE,

Notary Public in and for the State of Washington,
Residing at Seattle, Wash.

(COPY OF NOTICE OF PUBLICATION.)

Western District of Washington,—ss.

The President of the United States of America to
the Marshal of the United States for the
[Seal] Western District of Washington, Greeting:

Whereas, a petition hath been filed in the United States District Court for the Western District of Washington by the Northwestern Steamship Company, Ltd., a corporation, owner of the steamer "Santa Clara," for a Limitation of Liability concerning any loss, damage or injury arising out of, or occasioned by that certain voyage of the steamer "Santa Clara" leaving Uyak, Alaska, on October 6, 1906, and terminating at Seattle, Washington, on October 21, 1906, for the reasons and causes in said petition mentioned, and praying for a monition by the Court in that behalf to be made, and that all persons claiming damage for any such loss may be cited to appear before the Court and make due proof of their respective claims, and all proceedings being

had, that if it shall appear that said petitioner is not liable for any such loss, damage or injury, it may be so finally decreed by the Court; and,

Whereas, said Court has caused said steamer and her freight pending at the termination of said voyage to be appraised, and said appraisers have returned their appraisement to said Court, appraising said steamer and her freight pending at \$75,775.15, and said petitioner has filed with said Court a stipulation in the sum of \$75,774.15; and

Whereas, said Court has entered an order, directing said monition to issue;

You are therefore hereby commanded to cite all persons claiming any loss, damage or injury arising out of, or occasioned by that certain voyage of the steamer "Santa Clara" leaving Uyak, Alaska, on October 6, 1906, and terminating at Seattle, Washington, on October 21, 1906, to appear before said Court and make due proof of their respective claims before W. D. Totten, a commissioner of the United States District Court for the Western District of Washington, Northern Division, at his office, Room 653 New York Building, corner of Second Avenue and Cherry Street, in the City of Seattle, County of King, State of Washington, before June 29, 1908, at 10 o'clock in the forenoon of that day, and you are also commanded to cite such claimants to appear and answer the allegations of the petition herein on or before the said last-named date, or within such further time as the Court may grant, and to have and recover such relief as may be due.

And for what you have done in the premises do you make return to this Court, together with this writ.

Witness the Hon. C. H. HANFORD, Judge of said Court, at the City of Seattle, in the Northern Division of the Western District of Washington, this 24th day of March, in the year of our Lord one thousand nine hundred and eight, and of our Independence the one hundred and thirty-second.

R. M. HOPKINS,
Clerk.

IRA A. CAMPBELL,
BOGLE & SPOONER,

Proctors for Petitioner.

The within is a full, true and correct copy of an original writ this day issued.

Witness my hand and official seal this 24th day of March, 1908.

[Seal]

R. M. HOPKINS,
Clerk.

By A. N. Moore,
Deputy.

[Endorsed]: Affidavit of Publication of Monition. Filed in the U. S. District Court, Western Dist. of Washington. Jul. 11, 1908. R. M. Hopkins, Clerk. W. D. Covington, Deputy.

*In the District Court of the United States for the
Western District of Washington, Northern Di-
vision.*

IN ADMIRALTY—No. 3658.

In the Matter of the Petition of the NORTHWEST-
ERN STEAMSHIP COMPANY, LTD. (a
Corporation), Owner of the Steamer "SANTA
CLARA," an American Vessel, for a Limita-
tion of Liability.

Interlocutory Decree.

It appearing to this Court that pursuant to an order of this Court entered on the 23d day of March, 1908, wherein it was ordered, adjudged and decreed that a monition issue under hand and seal of this court against all persons claiming damages or injury arising out of the voyage of the steamer "Santa Clara," leaving Uyak, Alaska, on October 6, 1906, and arriving at Seattle, Washington, on the 21st day of October, 1896, citing them to appear before this Court on or before the 29th day of June, 1908, and make due proof of their claims or otherwise be forever barred; and further ordering and decreeing that notice of said monition be given by posting true and correct copies thereof on the bulletin boards at the United States Postoffice, the United States Court Building, at the corner of Fourth and Marion Streets, and the King County Courthouse, all in the city of Seattle, King County, Washington, and that further notice of said monition be given by publish-

ing notice thereof in the "Post-Intelligencer," a daily paper published in the City of Seattle, State of Washington, once a day for fourteen days, and thereafter once a week until said 29th day of June, 1908, that a monition issue under hand and seal of this court commanding the Marshal of the United States for the Western District of Washington, to cite all persons claiming any loss, damage or injury arising out of, or occasioned by, that certain voyage of the steamer "Santa Clara," leaving Uyak, Alaska, on the 6th day of October, 1906, and terminating at Seattle, Washington, on the 21st day of October, 1906, to appear before said Court and make due proof of their respective claims before W. D. Totten, a Commissioner of the United States District Court for the Western District of Washington, Northern Division, at his office, Room 653 New York Building, corner of Second Avenue and Cherry Street, in the City of Seattle, County of King, State of Washington, before June 29, 1908, at 10 o'clock in the forenoon of said day, and further commanding said Marshal to cite such claimants to appear and answer the allegations of the petition herein on or before said last-named date, or within such further time as the Court may grant; and,

It further appearing from the return of the Marshal of the United States for the Western District of Washington, that he served said monition on Wm. Martin personally, at Seattle, County of King, Western District of Washington, on the 24th day of March, 1908, and posted a certified copy of the monition at the King County Courthouse, at the United

States Courthouse and at the Postoffice at the city of Seattle on the 24th day of March, 1908, and,

It further appearing from the affidavit of A. P. Sawyer that further notice of said monition was given by publishing notice thereof in the "Post-Intelligencer," a daily paper published in the city of Seattle, County of King, State of Washington, once a day for fourteen days, commencing with the 25th day of March, 1908, to the 7th day of April, 1908, inclusive, and further published in said paper thereafter once a week until the 28th day of June, 1908; and,

It further appearing that no other person or persons claiming damage for any loss arising out of or occasioned by that certain voyage of the steamer "Santa Clara," leaving Uyak, Alaska, on the 6th day of October, 1906, and arriving at Seattle, Washington, on the 21st day of October, 1906, for the reasons and causes set forth in said petition, have appeared before this Court and filed proof of their respective claims, except C. Ranson, John Hannafin, A. Artal, Gust Anderson, Erik Johnson, Sam Atkinson, William Lundberg, J. L. Porter, Tom Berg, Jacob Osterholm, J. L. Sage, John Borland, J. R. Moreland, Louis Martin, Matt Mattson, William R. Pierce, H. A. Broaded, P. McCormick, Chas. Kelly, Frank Hanninga, Roaslie Papes, T. Vandenenk, F. C. Avery, A. O. Johnson, John Sullivan, J. Abohden, Emil Lindquist, Frank Smith, Hade Roark, G. W. Bell, Robak Powell, Pat Redmond and Emil Stank, who have heretofore appeared and filed their joint answer to the petition herein; and

The Court being fully advised in the premises;

Now, therefore, It is hereby ordered, adjudged and and decreed, That all persons other than C. Ransom, John Hannafin, A. Artal, Gust Anderson, Erik Johnson, Sam Atkinson, William Lundberg, J. L. Porter, Tom Berg, Jacob Osterholm, J. L. Sage, John Borland, J. L. Moreland, Louis Martin, Matt Mattson, William R. Pierce, H. A. Broaded, P. McCormick, Chas. Kelly, Frank Hannigan, Roaslie Papes, T. Vandenenk, F. C. Avery, A. O. Johnson, John Sullivan, J. Abohden, Emil Lindquist, Frank Smith, Hade Roark, G. W. Bell, Robak Powell, Pat Redmond and Emil Stank, claiming damages or injuries arising out of the voyage of the steamer "Santa Clara," leaving Uyak, Alaska, on the 6th day of October, 1906, and arriving at Seattle, Washington, on the 21st day of October, 1906, be and they are hereby forever barred from presenting or suing upon any claim or claims in this or any other court, for any damages or injuries arising out of or occurring upon the aforesaid voyage of said steamer "Santa Clara."

Entered this 13th day of July, A. D. 1908.

C. H. HANFORD,

Judge.

[Endorsed]: Interlocutory Decree. Filed in the U. S. District Court, Western Dist. of Washington. Jul. 13, 1908. R. M. Hopkins, Clerk.

In the District Court of the United States for the Western District of Washington, Northern Division.

IN ADMIRALTY—No. 3658.

In the Matter of the Petition of the NORTHWESTERN STEAMSHIP COMPANY, LTD. (a Corporation), Owner of the Steamer "SANTA CLARA," an American Vessel, for a Limitation of Liability.

Answer and Claims.

To the Hon. C. H. HANFORD, Judge of the Above-entitled Court:

Comes now C. Ranson, John Hannafin, A. Artal, Gust Anderson, Erik Johnson, Sam Atkinson, William Lundberg, J. L. Porter, Tom Berg, Jacob Osterholm, J. L. Sage, John Borland, J. R. Moreland, Louis Martin, Matt Mattson, William R. Pierce, H. A. Broaded, P. McCormick, Chas. Kelly, Frank Hannigan, Roaslie Papes, T. Vandenenk, F. C. Avery, A. O. Johnson, John Sullivan, J. Abohden, Emil Lindquist, Frank Smith, Hade Roark, G. W. Bell, Robak Powell, Pat Redmond and Emil Stank, and without waiving their right to prosecute their said several actions in the Superior Court of the State of Washington for King County, in which court each of said parties are now individually prosecuting their several suits and were for a long time prior to the commencement of this action; and file their claims herein in the sum of \$500.00 each; and each allege that

they have a good and meritorious claim against the said Northwestern Steamship Company, Ltd., in the said sum of \$500.00 arising out of the facts herein-after alleged, and for further answer to the petition herein say:

1.

That they admit the allegations contained in paragraphs one, two, three, four and five of said petition.

2.

That they admit the allegations contained in paragraph six, except that the claims of these claimants amount to more than the sum of \$12,500.

3.

That they admit the allegations contained in paragraph seven.

4.

That they deny each and every allegation contained in the eighth paragraph of said petition.

5.

That they deny each and every allegation contained in the ninth paragraph of said petition.

6.

That they admit the allegation contained in the tenth paragraph of said petition.

7.

That they deny the allegations contained in the eleventh paragraph of said petition.

And for further answer each of said answering claimants allege:

1.

That they each allege the fifth paragraph of said petition and thereby make the same a part hereof.

And in addition thereto allege that at the time of the commencement of said voyage, to wit, on or about the 6th day of October, 1906, referred to in the petition herein, said steamship "Santa Clara" was unseaworthy, and left said ports of Uyak and Valdes, Alaska, in an unseaworthy condition in the following respects: That said steamship "Santa Clara," on leaving on said voyage from Uyak and Valdes, Alaska, for Seattle, Washington, did not carry a sufficient supply of provisions on board for said voyage for the number of passengers carried on said voyage and vessel, and did not carry any emergency supply of provisions whatsoever upon said voyage; and that the boilers of said vessel were leaky, weak and defective and unfit to go to sea, and that the hull of said vessel was leaky and taking water, and it was necessary to keep the pumps going on said voyage; and that by reason of the defective conditions of the boilers of said vessel and the want of provisions on board it was necessary for said vessel to put into Juneau, Alaska, to be reprovisioned on said voyage, and to take what is known as to the inside passage on account of the condition of said vessel; and that on account thereof said vessel did not arrive in Seattle, Washington, until on or about the 20th day of October; and that the usual time for said voyage was about four to five days; and that, by reason of the facts alleged in paragraph five of the petition herein and this answer each of these claimants suffered hunger, cold, anxiety and fear upon said voyage and great discomforts from not being provided with a suitable place to sleep; and

allege that they were not provided with any place to sleep on the whole of said voyage, and when they arrived at Seattle were weak, sick and sore from said suffering, cold and hunger, and were damaged in the full sum of \$500.00 each in the premises, and for which damages each of the said claimants ask that they be allowed and awarded judgment in the full sum of \$500.00 each, except the claim of Sam Atkinson, which has been put into judgment in the Superior Court of the State of Washington for King County, and that the matters therein have been fully adjudicated, amounting to the sum of \$300.00 with costs, which allowance said Sam Atkinson asks from this Honorable Court; and each of said claimants ask judgment against the Northwestern Steamship Company, Ltd., in the aforesaid amount of \$500.00 and against the stipulation filed herein for the payment of the same on the limiting of the liability of said vessel, and that said stipulators be decreed to pay said amount with the costs incurred in the Superior Court of the State of Washington for King County and the costs and disbursements herein; and that each of said claimants have such other and further relief as may seem just and proper to this Honorable Court.

WM. MARTIN,

Proctor for said Claimants.

Western District of Washington,
Northern Division,—ss.

William Lundberg, being first duly sworn, on oath says: That he is and of the claimants named in the

foregoing answer and is familiar with the facts recited therein, and makes this affidavit for and on behalf of each of the foregoing claimant passengers in the above-entitled action; that he has read the foregoing answer, knows the contents thereof, and believes the same to be true, and that he is informed that the other claimants are absent from the City of Seattle and County of King, Wash.

[Seal]

WM. LUNDBERG.

Subscribed and sworn to before me this 19th day of March, 1908.

WM. MARTIN,

Notary Public for the State of Washington, Residing
at Seattle, Wash.

Copy of within answer received this 20th day of March, 1908.

IRA CAMPBELL and
BOGLE & SPOONER,
Proctors for Petitioner.

[Endorsed]: Answer. Filed in the U. S. District Court, Western Dist. of Washington. Oct. 26, 1908. R. M. Hopkins, Clerk. A. N. Moore, Deputy.

In the District Court of the United States for the Western District of Washington, Northern Division.

IN ADMIRALTY—No. 3658.

In the Matter of the Petition of the NORTHWESTERN STEAMSHIP COMPANY, LTD. (a Corporation), Owner of the Steamer "SANTA CLARA," an American Vessel, for a Limitation of Liability.

Petitioner's Objections to Allowance of Claims.

Comes now the petitioner herein, the Northwestern Steamship Company, Ltd., and objects to the allowance of the claims in the above-entitled cause of C. Ransom, John Hanafin, A. Artal, Gust Anderson, Erik Johnson, Sam Atkinson, William Lundberg, J. L. Porter, Tom Berg, Jacob Osterholm, J. L. Sage, John Borland, J. R. Moreland, Louis Martin, Matt Mattson, William R. Pierce, H. A. Broaded, P. McCormick, Chas. Kelly, Frank Hannigan, Roaslie Papes, T. Vandenenk, F. C. Avery, A. O. Johnson, John Sullivan, J. Abohden, Emil Lindquist, Frank Smith, Hade Roark, G. W. Bell, Robak Powell, Pat Redmond and Emil Stank, upon the grounds and for the reasons that said steamer "Santa Clara" was at the time of the commencement of said voyage, to wit, on or about the 6th day of October, 1906, and at all times thereafter, in seaworthy condition and was well and sufficiently supplied with good, wholesome

food, and the same was served at all times during said voyage in a clean and well-cooked condition and in quantities for all the passengers on said steamer; that all of said passengers on said steamer had good, clean berths, except a small number from the port of Valdes, who took passage upon said steamer well knowing that all of the berths were taken, and that if they did not desire to go their passage money would be refunded, and well knowing if they did go they would have to take, and agreed to accept, such accommodations as would be given them, and for such passengers as did not have regular berths, equal or better accommodations were furnished them in the saloon and social hall of said steamer; that the sleeping, dining and other quarters on said steamer were well ventilated, and were at all times on said voyage kept in a clean and sanitary condition; that the steamer did not have passengers in excess of the number allowed by her certificate of inspection.

In further support of its objections to the allowance of said claims, petitioner herein denies each and every of the allegations of the further answer of said answering claimants, alleged and set forth on pages 2, 3 and 4 of said claimants' answer to the petition herein, except that portion of said further answer which alleges and makes part thereof that portion of paragraph V of the petition, commencing with the 18th line and closing with the 25th line of said page 2 of said petition, which portion of said

paragraph V of said petition, petitioner admits to be true.

NORTHWESTERN STEAMSHIP COMPANY, LTD.

[Seal]

By D. H. JARVIS,
Secretary.

BOGLE & SPOONER,
IRA A. CAMPBELL,
Proctors for Petitioner.

State of Washington,
County of King,—ss.

D. H. Jarvis, being first duly sworn, on oath, deposes and says: That he is Secretary of the Northwestern Steamship Company, Ltd., a Corporation, petitioner herein, and as such officer is authorized to make this verification for and on behalf of said company; that as such officer he makes this verification for and on behalf of said company; that he has read the foregoing objections, knows the contents thereof, and believes the same to be true.

D. H. JARVIS.

Subscribed and sworn to before me this 3d day of July, A. D. 1908.

[Seal]

F. T. MERRITT,
Notary Public in and for the State of Washington,
Residing at Seattle, Wn.

[Endorsed]: Petitioner's Objections to Allowance of Claims. Filed in the U. S. District Court, Western Dist. of Washington. October 26, 1908. R. M. Hopkins, Clerk.

*In the District Court of the United States for the
Western District of Washington, Northern Di-
vision.*

No. 3658.

In the Matter of the Petition of the NORTHWEST-
ERN STEAMSHIP COMPANY, LTD. (a
Corporation), Owner of the Steamer "SANTA
CLARA," an American Vessel, for a Limita-
tion of Liabilities.

Commissioner's Report.

To the Honorable CORNELIUS H. HANFORD,
Judge of the Above-entitled Court:

I, W. D. Totten, commissioner named in the order of the above-entitled court, made and entered in the above-entitled proceeding on the 23d day of March, 1908, before whom the claims of all persons claiming damages or injuries arising out of the voyage of the steamer "Santa Clara" referred to in the libel and petition in the above-entitled proceeding were required to present their claims for damages or injuries, do hereby respectfully certify and report that William Martin, Esquire, proctor of said claimants, filed his answer in the above-entitled matter with me on the 27th day of January, 1908, and that on the 3d day of July, 1908, Messrs. Bogle & Spooner and Ira A. Campbell, proctors for the petitioner in the above-entitled matter, filed the objections of the Northwestern Steamship Company, Ltd., to the allowance of claims in the above-entitled matter.

The said answer and objections are herewith returned.

I further certify and report that proofs of claims were made before me as Commissioner in the above-entitled court, for the following claimants, in support of their respective claims, viz.: F. C. Avery, Hade Roark, Emil Stank, A. C. Johnson, Patrick Redmond, and William Lumberg.

I further certify that proofs were made before me by the petitioner herein, in support of said objections to the claims of the respective claimants herein, and on behalf of said petitioner the following-named witnesses were sworn and examined: F. J. Stephens, H. McKevitt, M. B. Holland, J. G. Dillon, L. J. Schage, and J. W. Hare.

I further certify and report that the testimony of the witnesses taken before me is fully set forth and shown in the transcript thereof, on file in this matter, all of which is respectfully submitted.

W. D. TOTTEN,
Special Commissioner.

[Endorsed]: Commissioner's Report. Filed in the U. S. District Court, Western Dist. of Washington. October 26, 1908. R. M. Hopkins, Clerk. A. N. Moore, Deputy.

[Objections of Sam Atkinson et al. to Order Limiting Liability, etc.]

Mr. MARTIN.—The following-named parties: Sam Atkinson, C. Ransom, John Hannofen, E. Artel, Gus Anderson, Eric Johnson, William Lund-

berg, J. L. Porter, Tom Berg, Jacob Osterholm, J. L. Sage, John Borlan, J. R. Moreland, Lewis Martin, Mat Matzen, William R. Pierce, H. A. Broadead, P. McCormack, Charles Kelly, Frank Hannigan, Rosalie Papes, T. Vandenenk, F. C. Avery, A. O. Johnson, John Sullivan, J. Abohden, Emil Lindquist, Frank Smith. Hade Roark, C. W. Bell, Roback Powell, Pat Redmond, and Emil Stank, having each, sometime ago, commenced an action in the Superior Court of King County, State of Washington, against the Northwestern Steamship Company, Limited, to recover for damages claimed by them from the Northwestern Steamship Company, Limited, arising out of breach of contract of carriage on a voyage on the steamship "Santa Clara," leaving Uyak, Seward and Valdes, Alaska, on the 6th day of October, 1906, and arriving at Seattle, Washington, on the 21st day of October, 1906, to recover the sum of \$500 each; object to the order limiting the liability of the Northwestern Steamship Company, Limited, the owner of the steamship "Santa Clara," by the United States District Court for the Western District of Washington, Northern Division, upon the petition filed by the Northwestern Steamship Company, Limited, being cause No. 3658, and to the restraining order issued by said District Court restraining the said parties from prosecuting their said suits in the Superior Court of King County, State of Washington, to recover on the common-law liability of the Northwestern Steamship Company, Limited, to them on their several claims, and to the order, notice and monition requir-

ing the said parties each to file their claim and make proof of their claim before the Honorable W. D. Totten, commissioner of the United States District Court for the Western District of Washington, Northern Division, before the 29th day of June, 1908, and the order enjoining and restraining each of said parties from prosecuting their claim for said damages on heir said common-law liability in any other court.

Each of said parties, without waiving their said rights and objections, now present their claim in this court for allowance, each in the sum of five hundred dollars, and in support thereof submit the following as their affidavit and evidence and proof of their claim.

[Certain Offers in Evidence.]

We will first offer in evidence the certified copy of the judgment entered in the Superior Court of King County, Washington, on the 10th day of January, 1908, in the case of Sam Atkinson, plaintiff, versus the Northwestern Steamship Company, Limited, a corporation, being cause No. 56,186; and a certified copy of the execution docket in this same case showing the amount of the judgment to be \$300, entered February 10, 1908, with costs amounting to \$114.40, and the claim of the said Sam Atkinson.

Mr. CAMPBELL.—We object to that as not being a final judgment, as there is now an appeal pending to the Supreme Court of the State of Washington from said judgment.

Mr. MARTIN.—As I understand it, the Superior Court has been enjoined from taking any proceeding in this case at all.

Mr. CAMPBELL.—I don't think the Atkinson case is mentioned in the order.

(Documents received in evidence and marked Claimants' Exhibits "A" and "B.")

Mr. MARTIN.—I next offer in evidence a claim in the sum of \$500 against the "Santa Clara" which was presented to the Northwestern Steamship Company on the 20th day of October, 1906, which is signed by each of the parties thereto, their original signatures being on the same.

Mr. CAMPBELL.—There are only twenty-seven signatures out of the thirty-three which appear in this case.

(Document received in evidence and marked Claimants' Exhibit "C.")

Mr. MARTIN.—I next offer in evidence 22 of the tickets of the above-named claimants, to be attached together as one exhibit; the tickets for the remainder of said claimants will be furnished by the proctor for the petitioner, Northwestern Steamship Company, Limited, as soon as he can get them segregated from the other tickets.

Mr. CAMPBELL.—If it is possible to produce them we will produce them.

Mr. MARTIN.—At this time we make a demand upon you to produce them at the next hearing.

(Tickets received in evidence and marked Claimant's Exhibit "D.")

Mr. MARTIN.—I next offer in evidence a copy of the claim presented to the Northwestern Steamship Company, Limited, on the 20th day of October, 1906, which was served upon the Northwestern Steamship

Company, Limited, on the 20th day of October, 1906.

(Document received in evidence and marked Claimants' Exhibit "E.")

[Testimony on Behalf of the Claimants.]

[Testimony of F. C. Avery, for Claimants.]

F. C. AVERY, one of the claimants, produced as a witness in behalf of claimants, being first duly cautioned and sworn, testifies as follows:

Q. (Mr. MARTIN.) You are the same party that is plaintiff in an action in the Superior Court of the State of Washington, that was commenced prior to this action? A. Yes, sir.

Q. Were you a passenger on the steamship "Santa Clara" leaving Valdes and Seward, Alaska, for Seattle, on or about the 6th day of October, 1906? A. Yes, sir, I was.

Q. I will ask you whether or not you purchased a ticket on the vessel and voyage?

A. Yes, sir.

Q. I will ask you to examine this ticket here which is included in the bunch marked exhibit "D," and state if the name F. C. Avery on it is your signature.

A. Yes, sir, that is my writing.

Q. What did you pay for your ticket?

A. \$25.

Q. Just go ahead and tell, Mr. Avery, what accommodations, if any, were given to you on that trip and voyage.

(Testimony of F. C. Avery.)

A. Well, to start in, when I bought my ticket I asked the man about the accommodations and he said I would need my blankets and that was all; that I would have a bunk and plenty of food and we would only be five days coming down. I wanted to buy a first-class ticket but he said he was out, and it would be only five days, and he said he thought we could put up with it and that the fare would be good, and so I bought a second-class. I came aboard the ship and I could not get any bunk and they didn't seem to try to provide for any, and instead of being five days it was twelve days coming down, and I never had a chance to take my clothes off the whole trip coming down, and I slept on the floor.

Q. It was more than twelve days?

A. No, sir, twelve days from Valdes; it was one day longer from Seward. And the grub was so bad we could hardly eat it.

Q. Now, state what effort you made to get a berth on that vessel.

A. Well, I went to the purser and also went to the captain and he said he would have the carpenter fix up some berths, and the carpenter came down where we were sleeping and there was just a short partition running out from the wall of the vessel, and he nailed two boards straight up and down from the floor to the ceiling and that was as far as he ever went towards fixing berths. There was some big sheets of boiler iron sitting up there and he threw them over on the floor and we had to sleep on them; on the top of the hatch; they were laid on the hatch.

(Testimony of F. C. Avery.)

Q. Did you sleep on this boiler iron when you did sleep on the voyage?

A. Yes, sir; that was the only place I had; that is all I could get.

Q. Did you look round for a better place?

A. Yes, sir.

Q. Could you find it? A. No, sir.

Q. This is your signature on exhibit "C" (showing document to witness).

A. Yes, sir.

Q. Were you up at my office when that claim was signed up? A. Yes.

Q. Did you see these other fellows sign up there too? A. Yes, sir.

Q. All at once?

A. All at the same time.

Q. The same parties whose names are on that exhibit "C"? A. Yes—

Q. —Were those parties on the vessel and on that voyage?

A. Yes, sir, we all went up there together to your office.

Q. From that trip?

A. Yes, the next morning.

Q. Now, where did they sleep on that voyage?

Mr. CAMPBELL.—I object to that as irrelevant and immaterial as to where other passengers than this one slept.

A. Well, they slept on the floor and on the tables and under the tables and in the smoking-room; in

(Testimony of F. C. Avery.)

fact you would find them all around the ship in little blind hallways and any place they could get.

Q. (Mr. MARTIN.) How many parties were sleeping on the floor and in the hallways?

(Same objection interposed.)

A. I should judge there was in the neighborhood of fifty.

Q. I will ask you if there were more people sleeping on the floor than those parties that signed up this claim with you?

(Same objection and also as irrelevant, immaterial and incompetent.)

A. Yes, sir.

Q. More besides that? A. Yes.

Q. What, if any, effort was made there by those other passengers mentioned in this exhibit "C" to procure a berth, that you saw?

(Same objection and also as leading.)

A. It seems they were all in about the same box—they were running to the captain and the purser and the mate, but it didn't do any good.

Mr. CAMPBELL.—I move to strike out the latter part of the answer as being a conclusion.

Q. (Mr. MARTIN.) What did he say?

A. Well, he said—

Q. (Mr. CAMPBELL.) Did you hear this conversation with the captain and those other passengers?

A. Only when I was with him myself; there was two or three of us walked in a bunch,

(Testimony of F. C. Avery.)

Mr. CAMPBELL.—We object to the witness testifying what the captain said except when he was present.

Q. (Mr. MARTIN.) What part of the ship was this in which you were required to sleep on this boiler iron?

A. It was underneath the deck, inside of the vessel; I don't know what part they call it; it was down below.

Q. Was it on the same deck that the other passengers were sleeping on?

A. No, sir—that is the second-class, it was the same deck.

Q. But in a part not prepared for sleeping quarters? A. No, sir.

Q. Now, just state to the commissioner here now and the Court what inconvenience you suffered by reason of being compelled to sleep in this part of the vessel on this boiler iron and not being provided with any berth.

(Objected to as leading.)

A. Well, it was almost impossible to get much sleep because the boiler iron laid sort of in a hall where the sailors and everybody, and the Chinamen were going backwards and forwards in the forward part of the vessel and they had to walk over it and every time they touched it it would flap together.

Q. Rattle? A. Rattle, yes.

Q. State how frequently they walked over it, if you can.

(Testimony of F. C. Avery.)

A. Well, it seems like every half hour or so all night somebody walked over it.

Q. State whether or not anyone was walking or roaming around in that department at night.

A. Yes, sir; there were Chinamen gambling all around there and they were up and down and out and in there all right, and the sailors were passing backwards and forwards. One or two nights one of the sailors came in there drunk and we found him lying right across our bed asleep, and we had to rout him out.

Q. State whether you suffered much from this inconvenience.

A. Yes, sir, I did; I was not able to navigate when I got down here; I was tired out—I didn't have no chance to take my clothes off on the whole trip, and getting no rest and no place to sit down only just lay down on this place there.

Q. Could you lie down there in the daytime?

A. No, sir; the place was used in the daytime for the Chinamen to get their meals in and set their tables up on.

Q. What time did you have to get out of there in the morning?

A. About seven o'clock.

Q. Now, what provision did they make there on the vessel for your washing on that trip?

A. They didn't make any; what washing we got we went up to the first-class passengers' toilet and washed; we could not wash at all down below.

Q. Was there a place up there where you could wash? A. Yes.

(Testimony of F. C. Avery.)

Q. What kind of water did they furnish you to drink on that trip?

A. The water was very filthy; it was warm and salty and also dirty and filthy.

Q. What kind of food was furnished you?

A. The food was bad; there was very little of it; you could not eat it at all.

Q. Describe fully to the Court.

A. The meat generally it was some kind of a stew and it was spoiled meat before it was cooked evidently, from the smell of it and there would be some few vegetables mixed with it, and they had sour bread that we could not eat at all and tea and coffee—that was about the principal diet on the trip.

Q. What was wrong with it?

A. Well, the bread was sour is all I know; it was doughy—heavy.

Q. How was the other victuals?

A. Well, outside of the potatoes, it was not any good at all; we had no bread we could eat with the meat; of course sometimes we got boiled potatoes, but they were boiled with the skin and dirt on; of course they were dirty, but they were the only things we could eat.

Q. To what extent was the meat decayed?

A. Well, you could smell it all over that part of the vessel where they fed us.

Q. Was it palatable? A. No, sir.

Q. Do you know of any ptomaine poisoning on the boat?

(Objected to as leading.)

(Testimony of F. C. Avery.)

Q. How was the meal served?

A. It was served mostly in pans; they would put a panful of it on the table and everybody help themselves; bread and potatoes and meats and everything put in the same way in pans.

Q. In bulk? A. In bulk, yes, sir.

Q. You may state whether or not they carried any regular waiters in that department or some workaways.

A. They were workaways, at least that is what they claimed when we tried to get any satisfaction out of them they simply said they were working their way and they didn't have anything to do with it, when we kicked about the grub.

Q. Did you suffer much from hunger?

A. Yes, and also thirst.

Q. To what extent?

A. Well, I managed to eat just about once a day, just enough to keep alive; that was all I could eat, except when I was ashore in Juneau and I had a chance to fill up pretty good there; it was just impossible to eat the grub; and that was all there was to it.

Q. Describe your suffering, if you can, from hunger and thirst on that trip.

A. Well, it is kind of a hard thing to describe. If a man is hungry he feels like he could eat most anything, and still when he would go to the table with what he would get it would turn you agin it, you couldn't eat it. Only for the little tea that they

(Testimony of F. C. Avery.)

got—that was the only thing we had to drink—I could drink a little of that.

Q. What was the condition of your health when you went aboard the vessel?

A. It was good; I had been working hard all the summer.

Q. What was it when you came ashore in Seattle?

A. Well, I was pretty crippled up with rheumatiz and weak from the trip; it was a month before I felt strong enough to go to work again or do anything.

Q. It was a month? A. Yes.

Q. Had you usually obtained employment when you were able to do it? A. Yes.

Q. What did you earn a day?

A. In Alaska?

Q. Yes.

A. I was getting from \$75 to \$100 a month where I worked.

Q. When you were working?

A. Yes; it was always \$75, and if I got some over time during the month sometimes it would run up to a hundred.

Q. You say you were unable to do any work for a month after you got off the vessel?

(Objected to as leading.)

A. Yes, sir.

Q. On what account?

A. The treatment coming down on the trip was all I could lay it to.

(Testimony of F. C. Avery.)

Q. What was the condition of the vessel as to cleanliness?

A. Well, it was filthy, to tell the truth of it. The quarters where they had us was very filthy, wet and damp, and the closet down there was slopping over and running over on the floor and everybody that went through there would drag it all over the vessel, and also at night-time when they would walk over it when we were asleep they would drag it right on to us—walk right over the closet and drag it over us.

Q. How many people were down there in that department, as near as you can tell?

A. In the neighborhood of 150, I think, judge, anyhow.

Q. What did they consist of?

(Objected to as irrelevant and immaterial.)

A. Well, it was a mixed lot; there was dagoes and lots of Chinese and a few Japs and lots of old countrymen; I could not tell what they were all.

Q. How many Chinamen were there there?

Mr. CAMPBELL.—I object to that as irrelevant, immaterial and incompetent as to what the nationality of the passengers were.

A. Anywhere from 60 to 75.

Q. Chinamen?

A. Maybe more or less, I could not say exactly, I did not count them.

Q. About how many Japs?

(Same objection.)

A. Well, there was not so many Japs; there was probably a dozen or fifteen Japs.

(Testimony of F. C. Avery.)

Q. Did the Chinamen pass around where you were?

A. Yes, they had to walk right over us and pass right around when they would go to this closet—we slept right between them and this closet.

Q. Did the Chinamen and the Japs and white men all use the same closet?

(Objected to as irrelevant, immaterial and incompetent.)

A. Yes, sir, except what white men went up to the first-class closet.

Q. What was the condition of this closet?

A. Well, it seemed to be stopped up mostly, like from the Chinamen emptying the slops in there, and running over on the floor.

Q. Did you notice any offensive odors from it?
(Objected to as irrelevant and immaterial.)

A. I should say it was pretty offensive all the time, pretty rank.

Q. Did these Chinamen all have berths?

(Objected to as irrelevant and immaterial.)

A. Yes, sir.

Q. Did the Japs have berths?

(Same objection.)

A. Yes, sir.

Q. What, if any, effort was made to keep the vessel clean?

A. Well, there was very little; I only seen them hose out once on the trip down.

Q. Where was that?

A. That was just before they got into Seattle.

(Testimony of F. C. Avery.)

Q. Describe the condition of the floor.

A. Well, the floor was wet and filthy and all slimy from this closet dragged all over it and through it; of course sometimes they would brush it up a little with brooms, but it wouldn't help it much.

Q. Did you notice anyone sick on the trip?

A. There was some few seasick before they got on the inside.

Q. Did you ever see any spew on the floor?

A. Yes.

Q. How frequently?

A. Well, the first few days before we got inside it was all the time, because there was more or less of them sick and throwing up.

Q. What, if anything, was done about cleaning it up? A. I didn't see anything.

Q. Did you notice any offensive odors from it?

A. Yes.

Q. Now, what, if anything, did you notice unusual about the vessel in navigating?

A. Well, the second or third day out they had an accident of some kind, one of the boilers was out of commission and they weren't making any time, and all the information we could get was that they took all the steam they could get from the other boiler to keep the pumps a going, she was leaking so bad.

Mr. CAMPBELL.—I move to strike that out as hearsay and as irrelevant, immaterial and incompetent.

(Testimony of F. C. Avery.)

Q. (Mr. MARTIN.) What, if anything, did you notice of the vessel laying to?

(Objected to as leading.)

A. She was lying to some of the nights before they got to Juneau they laid to one night all night.

Q. What seemed to be the matter?

A. Well, I could not tell, unless they were afraid to go ahead, as if they didn't know where they were. I couldn't tell what it was; and one night when they were working on the boilers they were laid up I guess.

Q. Did you notice whether the pumps were running? A. Yes.

Q. What, if anything, was said on that trip right at the time about it taking all the steam that the boiler could keep up to keep the pumps going?

(Objected to as hearsay and leading.)

A. It was the principal talk among the sailors and ship hands.

Q. Who did you hear saying that, if anyone?

A. The second engineer.

Q. What did you hear him say?

A. He said they were crippled; he didn't know how they were going to get out of it. He said it took about all the steam they could make to keep the pumps a-going and keep the vessel headed to the wind.

Q. What is the usual time it takes a vessel to come from Valdes here?

(Objected to as irrelevant and immaterial.)

(Testimony of F. C. Avery.)

A. It depends on which route it takes. There is two routes, the inside and the outside route. I went up on the same vessel in the summer and we were twelve days going up; they told me they make it in five days coming back. The agent at Valdes he said they would come back in five days on the outside.

Q. What, if anything, did you notice about their shortage of food?

(Objected to as leading.)

A. I could not help but notice that when we didn't get it—they didn't give us no food, and we saw them putting aboard a lot at Juneau.

Q. Did they take aboard any food at Juneau?

A. Yes.

Q. Did they take on any coal on board at Juneau?

(Objected to as leading.)

A. I don't think so—I didn't see them take any.

Cross-examination.

Q. (Mr. CAMPBELL.) How long have you been going to Alaska, Mr. Avery?

A. Well, that was my fifth summer there.

Q. To the southwestern Alaska country?

A. Well, I was twice to Skagway and twice to Nome and that season to Valdes.

Q. That was your first season to the westward?

A. Well, to Valdes, I don't know what you call the westward.

Q. When you are going to Valdes or those ports along that coast, is it not spoken of as going to the westward?

A. I could not say.

(Testimony of F. C. Avery.)

Q. You are not familiar enough with the country to know? A. No, sir.

Q. That was the first time you were around Valdes and Seward? A. Yes.

Q. And you say you went up on the "Santa Clara"? A. Yes.

Q. The spring before? A. Yes.

Q. And you took the inside passage at that time?

A. Yes.

Q. And it took you twelve days to make the trip?

A. Yes.

Q. And this time coming down you were thirteen days making the trip?

A. Twelve from Valdes.

Q. And you took the inside passage coming down? A. Yes.

Q. You are not a practical navigator yourself, are you? A. No, sir.

Q. You do not consider yourself competent to judge whether the condition of the weather and the waves are dangerous to the ship or not?

A. To a certain extent, yes, I would be, of course we had no bad storm.

Q. You have not got a technical knowledge sufficient to enable you to pass upon the ability of the steamer to weather out a certain storm?

A. We had no storms that I saw.

Q. Will you answer my question? Do you profess to have sufficient technical knowledge to enable you to pass upon the ability of a steamer to weather out a certain storm? A. No, sir.

(Testimony of F. C. Avery.)

Q. Now, how long before you took passage on the "Santa Clara" did you purchase your ticket at Valdes?

A. It was the second night before she sailed.

Q. Do you remember what day you sailed on?

A. Thursday, if I am not mistaken.

Q. And you purchased it on Tuesday evening?

A. It was two nights before she sailed.

Q. And at that time you say that all the first-class berths had been sold out?

A. That is what he told me. Of course he said he had some others but they were spoken for and engaged, and he would not sell them.

Q. He would not sell them at that time?

A. No, sir.

Q. Then you say you purchased this ticket which you say you signed?

A. Yes, sir.

Q. And that is your signature, F. C. Avery, to this ticket?

A. Yes, sir.

Q. And that was stamped at the time you purchased it, was it?

A. Yes, sir.

Q. And at that time he told you you would have to furnish your own blankets in the steerage?

A. Yes, sir.

Q. Did you ever travel steerage before going on these boats to that portion of the country?

A. No, sir.

Q. Where were you when the vessel arrived in the port at Valdes?

A. I was at the hotel where I was stopping, lodging-house.

(Testimony of F. C. Avery.)

Q. Did you see her when she came into the harbor?
A. No, sir.

Q. What time of day did she come in?

A. If I remember right, it was during the latter part of the evening some time, I heard she was in, but I didn't go to see her until the next morning.

Q. You did not go to see her until the next morning?

A. No, sir, not until I went aboard.

Q. And she laid there all that night?

A. Yes, sir; I was a-bed when I heard she came in; some fellow came in the house and said the "Santa Clara" was in.

Q. What time did you go down to the boat?

A. About 9 o'clock.

Q. In the morning?
A. Yes, sir.

Q. And when you went down there the gang-plank was extended out to the dock, wasn't it?

A. Yes.

Q. And there was a quartermaster at the gang-plank?
A. Yes.

Q. Didn't he at that time tell you that they had no berths for steerage passengers?

A. No, sir. He asked if I had a ticket and I told him I had and he said, "Let's see it," and I showed it to him and he said, "All right." That's all he said.

Q. You are positive he did not tell you that?

A. Yes.

Q. Did you then go down to the steerage quarters?
A. I did.

Q. Did you pick out a berth?

(Testimony of F. C. Avery.)

A. There was none to pick out.

Q. Did you endeavor to pick out a berth?

A. Yes.

Q. You found all the berths were full?

A. Yes, sir.

Q. And that was prior to the time the steamer left the dock, was it?

A. Yes, well she got away—I think I was below when she started—I was still hunting for a berth.

Q. How long did it take you to find out whether all the berths were taken or not?

A. Well, it didn't take so very long down there.

Q. What time of day did she leave port, do you remember?

A. Well, it was about ten o'clock.

Q. So that prior to the time she left Valdes you actually knew that she did not have a steerage berth, didn't you?

(Objected to as irrelevant, immaterial and incompetent.)

A. I knew it that way, but the steward said they would fix berths.

Q. The steward said they would fix berths?

A. Yes.

Q. Who was the steward?

A. It was the steward below.

Q. The second steward?

A. The second steward.

Q. You testified in the Superior Court case, didn't you?

A. Yes.

(Testimony of F. C. Avery.)

Q. Was the testimony which you gave in the Superior Court true? A. Yes.

Q. He told you they would fix berths?

A. Yes.

Q. As a matter of fact, didn't they announce throughout the steerage that there were no berths for Valdes passengers and that anyone who wanted to go would have to take chances of getting a berth?

A. No, sir, I never heard a word of it.

Q. Were you around the vessel after you went aboard from 9 o'clock up to the time she departed?

A. Yes.

Q. And you never heard that at all?

A. No, sir.

Q. Did you go past the ticket office on the morning going down to the "Santa Clara"?

A. No, sir.

Q. Are you not required to pass the ticket office from where you were staying? A. No, sir.

Mr. MARTIN.—We object to this as irrelevant, immaterial incompetent and simply encumbering the record.

Q. (Mr. CAMPBELL.) Didn't you see a notice posted on the bulletin-board that there were no berths for Valdes steerage passengers and that they could go and get a refund of their money if they did not want to go and take their chances?

A. No, sir, I did not, because I was not near the office after I got my ticket.

Q. How far away was this office—it was right at the head of the street where you went down to the dock.

(Testimony of F. C. Avery.)

A. About half a block off the corner.

Q. It was just at the head of the street where you go down to the dock?

A. Not exactly at the head of the street, but it was about half a block off the corner.

Q. It was clearly visible when you turned to go down to the dock.

A. It was clearly visible—there was no building between that on the street.

Q. Didn't you hear any of the passengers discussing the fact down there that notice had been given that they could get their money refunded?

A. No, sir.

Q. Who did you make your complaint to?

A. I complained to all the officers whenever we would meet them.

Q. Who did you make your complaint to?

A. The mate, the purser.

Q. When did you make complaint to the mate?

A. I think it was the second day out—the first day I tackled the purser.

Q. What did you say to the purser?

A. Well, I told him I wanted a berth—I wanted a place to sleep.

Q. What did he tell you?

A. Well, he said I would have to go below and the second steward would fix me out.

Q. As a matter of fact did you go to the chief steward too for a berth?

A. I cannot remember now; I went to so many.

(Testimony of F. C. Avery.)

Q. Well, you ought to be able to remember on that point as well as on these others.

A. I could not say positively whether I went to the chief or not.

Q. So the second steward was the only one you tackled for the berth?

A. No sir; the purser, and then we went to the captain.

Q. When did you go to the captain?

A. I think it was the third day out.

Q. The third day out? A. Yes, sir.

Q. What did he say to you?

A. We would have to see some of the rest of them—he didn't have anything to do with that.

Q. Who did he say to see?

A. To see the purser; to go to the purser and when you would go to the purser he would tell you to go to see the steward.

Q. Did you go to see the purser after you saw the captain? A. Yes.

Q. How many times did you see the purser?

A. Twice.

Q. Before you ever saw the captain?

A. Yes.

Q. Is it not a fact that the purser told you that you people could sleep in the saloon, in the social hall, on the seats and on the floor?

A. No, sir, he never told me a word.

Q. You knew there were passengers sleeping in there.

100 *The Northwestern Steamship Company, Ltd.,*
(Testimony of F. C. Avery.)

A. I saw some passengers sleeping in there and I knew—

Q. You knew there were steerage passengers that were given that permission? A. No, sir.

Q. Didn't you testify in the Superior Court that you saw steerage passengers in there sleeping on that floor? A. No, sir.

Q. If you did testify to that up there, then you were testifying to an untruth.

Mr. MARTIN.—I object to that as irrelevant, immaterial and incompetent.

Q. (Mr. CAMPBELL.) Is that true?

A. I testified that I seen first-class passengers sleeping on the floor.

Q. Didn't you testify that you saw steerage passengers? A. No, sir, I did not.

Mr. MARTIN.—I object to this as irrelevant, immaterial, incompetent and I am willing to put in the whole record here—you have a transcript of it—submit it right here in the case.

Q. (Mr. CAMPBELL.) You were given the freedom of the ship, were you not?

A. I suppose so; they didn't restrict us—they didn't say nothing to us—they didn't say where we could go and where we could not.

Q. Did you ever travel steerage before?

A. Yes.

Q. You know that on most vessels the steerage passengers are confined to the fore quarter of the vessel? A. If the ship is graded they are.

(Testimony of F. C. Avery.)

Q. As a general rule, the steerage passengers are confined to the fore quarter of the vessel but on this vessel you were given permission to go all over.

A. Yes.

Q. And you say you used the first-class passengers' toilet room? A. You had to.

Q. Did you? A. Yes.

Q. And you washed up there in the first-class passengers' quarters?

A. Yes.

Q. And you were given permission to go into the smoking-room?

A. I was not given it; I went in there.

Q. You were not stopped, were you?

A. I was ordered out once.

A. Who ordered you out? A. The steward.

Q. Who?

A. The purser I should say—when they collected my ticket.

Q. What day was that?

A. It was the same day they started—the first day.

Q. Half an hour after you had been outside?

A. Yes.

Q. That was when he ordered you out?

A. When he collected my ticket he said I belonged below and I told him I went below and I could not find any berth and he would have to give me some place to sleep. I had all my baggage in the smoking-room and he said there was no room in

(Testimony of F. C. Avery.)

there, and I told him that he would have to find me a place to sleep, so that I could get a place to put my things.

Q. That was when you first went to the purser?

A. Yes.

Q. That is when he was collecting the tickets?

A. Yes.

Q. From that time on did you go into the smoking-room without molestation?

A. I was in there a few times.

Q. Every time you wanted to?

A. No, because it was full lots of times and I could not get in there.

Q. It was not because the officers prevented it?

A. No, sir.

Q. It was because there were other people in the smoking-room? A. Yes.

Q. You were given permission to go about the decks of the vessel, were you not? A. Yes.

Q. All the decks for that matter? A. Yes.

Q. Whereabouts did you say you slept?

A. I slept on the hatch in that department where we were, under the top hatch, of course that would be on the other hatch.

Q. The steerage apartments on the "Santa Clara" have berths on both sides of the vessel.

A. Yes.

Q. And the bulkhead running between the two sections. A. Up to this hatch.

Q. And this hatch was practically across the space between the two sections?

(Testimony of F. C. Avery.)

A. Yes.

Q. And you say you slept on that hatch?

A. Yes.

Q. And you say you slept on the boiler iron?

A. Yes, you might call it—it was big heavy sheets of iron plates.

Q. And the companionway which led to the upper deck was forward of that, wasn't it?

A. Yes, there was a door on each side of where we slept; it ran into kind of a carpenter shop.

Q. The sailors in passing down to the forward part of the ship were not compelled to walk over the place you were sleeping?

A. A part of the time they had to have the door piled up with stuff.

Q. In going down to the eyes of the vessel they were not compelled to walk over the hatch where you were sleeping?

A. No, sir.

Mr. MARTIN.—But they did do it.

A. They did it, because the other door was piled up with stuff so that they could not walk over it and they would go through the closet.

Q. (Mr. CAMPBELL.) Where did they walk?

A. In going from their quarters and coming down the stairway in front.

Q. How do you know they were sailors?

A. I could see them working.

Q. What were they doing?

A. Scrubbing the decks and fixing ropes.

Q. Scrubbing the decks down below?

(Testimony of F. C. Avery.)

A. No, sir.

Q. Where were they scrubbing the decks?

A. On top.

Q. What time was this when they were scrubbing the decks? A. Every morning.

Q. And you would be there to see them?

A. I would have to go up there to get some fresh air.

Q. Then they did not walk over you when you were sleeping?

A. Not when I was up on the top they didn't, but during the night they did.

Q. Do you know whether it was the same men?

A. Yes.

Q. Did you identify them?

A. Yes, you could tell them—I could not now, but I did then.

Q. You are sure you recall at this time an absolute identification of those men?

A. I knew at the time that they were the men that worked on the ship.

Q. How did you know it?

A. Because I could see them; of course they were not all the time—there was lots of Chinamen and others walking over there and there was times that the sailors did.

Q. Most of the people that walked across there were passengers that were not sleeping.

A. The majority of them were the Chinamen.

Q. Passengers that were not sleeping?

A. Yes.

(Testimony of F. C. Avery.)

Q. These Chinamen and Japs which you are making such a great how-do-you-do about, were all on the starboard side of the vessel?

A. There was some Japs—

Q. Answer my question. I say the Japs and Chinamen were all on the starboard side of the vessel.

A. Part of them.

Q. Were they not all on the starboard side?

A. No, sir.

Q. Did any of them have any berths on the other side of the vessel?

A. Yes.

Q. How many of them?

A. There were two Japs and what I would call an Indian sleeping right alongside where we were lying on the floor.

Q. In the berths?

A. Yes.

Q. Two Japs and one Indian?

A. Yes.

Q. And the rest of them were confined in an apartment separate and apart from the others?

A. I could not say it was separate.

Q. It was on the other side of the vessel?

A. It was on the other side of the vessel.

Q. There was a bulkhead running between them?

A. Only part of the way.

Q. The greater part of the way, was there not?

A. Where this hatch was and these bunks forward next to this hatch, were all open right through.

Q. How close were the bunks on each side together, forward of this bulkhead?

A. From the two sides of the ship, you mean?

Q. Yes.

(Testimony of F. C. Avery.)

A. The Chinese bunks did not run any farther than the partition, while the white men's bunks *right right* through to the closet and in front of them was where they ate and set their things and piled their baggage.

Q. But the berths that the Chinamen were in were all back of this partition?

A. Back of the partition.

Q. You say you counted fifty people that were without berths?

A. I didn't say I counted them—I said I would judge there was fully that many.

Q. Then you were guessing at the number?

A. Well, I was taking an estimate of it.

Q. Wasn't it simply guesswork on your part?

A. I suppose it was.

Q. You never counted them?

A. No, sir, I did not go around and count them, one at the time.

Q. Did you see where all these people slept?

A. No, sir.

Q. You didn't see those sleeping up in the social hall?

A. I was up there and I see people sleeping in there and there was one fellow told me; I asked him where he was sleeping; I knew he got on late, and he was a first-class passenger and he said he was sleeping in the social hall, and he said there was several there.

Q. And from that you concluded that only those that were first-class passengers were sleeping in the social hall?

A. Yes.

(Testimony of F. C. Avery.)

Q. You do not know whether the steerage passengers were given permission to sleep in the social hall or not?

A. No, sir, I did not hear any of it.

Q. You do not know whether or not those fifty other passengers who did not have berths, came aboard the vessel with that knowledge, did you?

A. No, sir, I did not.

Q. You do not know but what those men knew that there were no berths and came aboard under those conditions?

Mr. MARTIN.—We object to this hypothetical question.

Mr. CAMPBELL.—They are not hypothetical questions—they will be demonstrated as facts before we get through with this case.

Q. You have no knowledge as to the knowledge with which these other passengers came aboard the vessel?

A. No, sir—they were all strangers to me.

Q. As a matter of fact those men that signed up this so-called complaint that you served upon the company the first day were unknown to you, were they not?

A. Except of meeting them on the boat.

Q. Except that when you would get together you would make up your minds that you would get a lawyer to bring suit for you, that was the first time you met them.

A. I met them on the way down on the boat.

Q. They were not personally known to you at all?

(Testimony of F. C. Avery.)

A. No, sir.

Q. In fact you just simply saw them around the boat, didn't you? A. Yes.

Q. You could not say at this time that every one of those men who signed this paper were without a berth, could you?

A. I could not swear to it, no, sir.

Q. You say that you were crippled with rheumatism? A. Yes.

Q. Whereabouts did you have this rheumatism?

A. My hips and the calves of my legs and knees.

Q. How do you know it is rheumatism?

A. It is pretty easy to tell rheumatism.

Q. Had you had it before? A. No, sir.

Q. How did you know it was rheumatism then?

A. Because I had all the symptoms of it.

Q. What are the symptoms of rheumatism?

Mr. MARTIN.—I object to this as irrelevant, immaterial, incompetent and simply encumbering the record.

A. Pains.

Q. (Mr. CAMPBELL.) What are the symptoms of rheumatism?

Mr. MARTIN.—I move that the costs of taking all this be charged to the petitioner.

Mr. CAMPBELL.—I submit that I have the right to cross-examine this witness and if the attorney wants to shut us out entirely let him make that statement to the Court and the Court will be fully advised; it seems to me that we have the right to question the veracity of this man who in twelve days'

(Testimony of F. C. Avery.)

time plunged from a condition of good health to total disability, as he says:

Q. Did you go to consult a physician about your rheumatism? A. No, sir.

Q. You did not think it was necessary, did you?

A. No, sir.

Q. You did not attempt to get any work for a month?

A. No, sir, it was a month before I felt like that I was able to.

Q. During that time you did not feel like doing anything? A. No, sir.

Q. And so you did not try to get any work, did you? A. No, sir.

Q. You did not consult a physician at all?

A. No, sir.

Q. Where did you live during that month?

A. I lived in my rooming-house on First avenue.

Q. Whereabouts?

A. At the Goldfield between Pike and Pine streets.

Q. The greater part of the day on the voyage down you were on deck, were you not?

A. Yes, sir.

Q. When you would get up in the morning you would go on deck? A. Yes.

Q. And you would stay there until breakfast was called? A. Yes.

Q. And then you would go down to breakfast?

A. Sometimes I would go down and sometimes—well, it was according to how I felt; if they had some mush I would go down and eat some mush.

(Testimony of F. C. Avery.)

Q. There was a pretty big sea on the way coming down?
A. Nothing extra.

Q. Was there not quite a heavy sea?

A. I have seen a whole lots heavier.

Q. Was not this a big sea?

A. No, I could not call it such.

Q. Have you ever been to sea as a business?

A. No, sir, but I have done a good deal of riding in steamboats.

Q. Whereabouts?

A. On the ocean, between San Francisco and Seattle and Seattle and Nome.

Q. This was not as big a sea as you saw on those voyages?
A. I should say not.

Q. But the vessel rolled and tossed?

A. Not so very bad.

Q. Didn't she take water over her nose?

A. I would not take a big sea that would hit a vessel and jump on deck.

Q. Didn't she take water over?

A. Yes, sir.

Q. And wet the decks down all over?

A. Yes.

Q. And there were seas that would rush alongside and lap over the rails?

A. I didn't see any do that.

Q. You didn't see any do that?
A. No, sir.

Q. You did not see any of those men who had to jump the seas as they swept over the vessels?

A. No, sir.

Q. A great many passengers were sick?

(Testimony of F. C. Avery.)

A. Yes, sir.

Q. And whenever you would have a body of men in a steerage or any other quarters together and any of them are seasick, the natural result is to give a disagreeable odor, is it not? A. Yes, sir.

Q. And for that reason you kept on deck as much of the time as you could? A. Yes, sir.

Q. And you were practically down there only at the meal hours that you attended and at the time when you went to bed at night?

A. Except when it was raining and I had to go down.

Q. You would be in the smoking-room, would you not?

A. In the daytimes you could not get in there, it was crowded.

Q. But you were on the deck under the protection of the awning above? A. Yes.

Q. So that the greater part of the time you were out of the steerage quarters?

A. I was out all I could be, all that it was possible.

Q. And your testimony is that during the time that you were down there in the steerage quarters you did not see them cleaning them up?

A. No, sir.

Q. But you do not know what was done during the time you were not down there, do you?

A. No, only the appearance of the place when I would go back, that was all I would go by.

Q. Because some of these passengers had vomited, wasn't it?

(Testimony of F. C. Avery.)

A. Vomited and then the dragging of this slime from the closet.

Q. You do not know and you cannot testify positively that no effort was made to clean the steerage quarters while you were absent, can you?

A. No, sir.

Q. Is it not true that a large part of the difficulty with this closet was due to the closet becoming clogged with stuff that was put in it? A. Yes.

Q. And do you recall the second steward being compelled to go over the side of the vessel to pull out the tin cans that were thrown in there?

A. I never knew of it until I heard them testify about it.

Q. You didn't see that?

A. No, sir; I didn't see it.

Q. Did you see any of the steerage passengers broach the cargo of canned salmon and take the salmon and eat it? A. No, sir.

Q. And throw the salmon cans into the closet?

A. The Chinamen dumped all their stuff in there, if there was any cans.

Q. Answer my question.

A. No, sir, I said not.

Q. You said that her boilers were out of commission; are you an engineer?

A. Well, I have done it.

Q. Are you an engineer?

A. Not by trade, no, sir.

Q. What is your trade?

A. I am a miner.

(Testimony of F. C. Avery.)

Q. Somebody simply told you that the boilers were out of commission?

A. Well, you could see that when they tore them up and worked at them.

Q. How were they tore up?

A. They were working inside of them and had the pipes out.

Q. Part of the flues? A. Yes.

Q. Do you know what was the matter with the boilers?

A. The flues blew out or something, they had to put new ones in.

Q. Do you know anything else that was the matter with these boilers besides one of the flues blowing out? A. No, sir.

Q. You say that the second engineer told you?

A. No, sir, I didn't say he told me; I heard him tell it—talking to some of the first-class passengers.

Q. You overheard this conversation?

A. Yes, sir.

Q. How far away were you?

A. About three feet.

Q. And he was talking to this crowd?

A. Well, it was only a couple of men talking to him.

Q. And you heard him say that they were having all they could do to keep enough steam on to keep her headed to the wind? A. Yes.

Q. And you say that her pumps were working?

A. Yes.

(Testimony of F. C. Avery.)

Q. You concluded that her pumps were working from the water that you saw going over the side of the vessel, didn't you? A. Yes, sir.

Q. There were men down in the steerage berths who were seasick all the way down?

A. I didn't see any seasick after we left Juneau.

Q. You didn't see any seasick after you left Juneau? A. No, sir.

Q. Were you down there during the daytime?

A. I was down there at meal times.

Q. During that time that you were down there you did not see anybody sick? A. No, sir.

Q. There were men lying in their berths down there at that time?

A. There was always men lying in their berths down there.

Q. You do not mean to say that those potatoes were boiled with dirt still on them that came from the soil?

A. They had the appearance of it; they were not clean.

Q. What you are complaining about is that they were boiled with their skins on?

A. There was dirt on them.

Q. How much dirt?

A. Enough so that it would be noticeable, whenever the skin would break they would be all black with the dirt inside.

Q. Dirt from the inside getting on the outside?

A. Dirt from the outside getting on the inside where the skins were broke.

(Testimony of witness closed.)

[**Testimony of Hade Roark, for Claimants.**]

HADE ROARK, one of the claimants, produced as a witness in behalf of claimants, being first duly cautioned and sworn, testified as follows:

Q. (Mr. MARTIN.) Were you one of the passengers on the steamship "Santa Clara" leaving Seward and Valdes about the 16th of October and getting into Seattle about the 20th or the 21st of October, 1906? A. Yes, sir.

Q. Did you buy a ticket on that trip and voyage?

A. Yes, I bought a ticket in Valdes.

Q. I will ask you to examine that ticket there and say whether that is your signature (showing).

A. Yes, sir.

Q. That is one of the tickets in the bunch marked exhibit "D"?

A. Well, that is my name, that is the ticket I bought.

Q. That was your ticket, wasn't it?

A. Yes.

Q. What did you pay for the ticket?

A. \$25.

Q. Where did you go aboard the vessel?

A. In Valdes.

Q. Now, just state to the Court here about what conditions you found prevailing on the boat when you went aboard.

A. Well, I found it bum myself, rotten; the meat was rotten that we were to eat; what I ate was; and no place to sleep except down in the hatch, and it

(Testimony of Hade Roark.)

was raining on you half the time and dogs tied up there to each end and the dogs to each end puking.

Q. What?

A. Dogs vomiting a dozen times.

Q. On you?

A. Right beside us, not four feet from us, and some one took them out and then a fellow brought them back down there and tied them up again, and they turned them loose and they were running all over.

Q. Where did you sleep on that trip?

A. Down in the hatch, right under that; there is a canvas over the top and we slept down there.

Q. The canvas which you speak of is over the hatch on the upper deck?

A. Yes, sir; and the Chinamen and Japs laid right about four feet from me; they were all mixed right in close together. We slept right under the table—when they moved the table out, we would lie down where the table was. They had an old box and some boards piled across to eat on and when they moved that back out of the way we laid there on some sheets of iron or steel; I don't know what it was doing there, but it was in there—some sheets of steel.

Q. What effort did you make to get a berth on the boat?

A. Well, we tried to get a place three or four different times, and they would not give us any satisfaction.

Mr. CAMPBELL.—You must testify about yourself.

(Testimony of Hade Roark.)

Mr. MARTIN.—That's all right.

A. There was dozens more in the same box with me.

Mr. CAMPBELL.—I want to know who he is talking about.

A. That fellow that was just in there before, and the other fellows that are outside there were some of them.

Q. (Mr. MARTIN.) You mean Avery and—

A. Avery and—

Mr. CAMPBELL.—And who else?

Mr. MARTIN.—You can cross-examine him when you get around to it.

Mr. CAMPBELL.—I think I have the right to know who he is talking about?

A. There was a whole floor lying there full of them kicking and about getting a berth and there was not any to be got, to tell the truth about it, at least they didn't give us any anyway.

Q. Now, you went to what officer of the vessel about the berth?

A. I went to the purser about the berth.

Q. How many times?

A. I went to him once that I know of.

Q. What did he say?

A. He didn't give us any answer at all; he didn't even want to recognize us the way he acted; he acted to me like he had the big-head. I don't know a thing about the fellow; I never saw him before.

Q. Who else did you see?

(Testimony of Hade Roark.)

A. Well, the first officer, I think it was; I asked him about it and he talked a little more favorable. He said he would see about it and he went on, and that was all there was to it; he never did anything about it.

Q. Now, did you look around the vessel to find any more available place to sleep?

A. We looked her over from one end to the other. We looked every place we could to try to find a place; naturally, a man would that had to sit up on some boxes, as we had to do the first night or so before we could find a place even to lie down comfortable for any length of time.

Q. What did you have to do the first night?

A. We sat up on some bundles the first night.

Q. You had to sit up?

A. Well, you could lie on them, but they weren't very comfortable to lie on. A lot of baggage piled up in one corner and we piled it up together and it left a flat place to lay in the first night or two—I didn't think about noticing it, but I know we didn't have any place to sleep.

Q. Now, were you required to sleep on the boiler iron all the way down?

A. Yes, we slept in one place—well, there would be other fellows roll in there, and we would have to do the best we could, but we tried to hold our own, as near as we could.

Q. About how many other people did you see on the vessel that were without berths, in the steerage?

(Objected to as irrelevant, immaterial and incompetent.)

(Testimony of Hade Roark.)

A. Well, there was a whole floor lying full down where we were. The fishermen had all the bunks anyway; when we got on at Valdes there was fellows that didn't have any bunks—fellows that got on at Seward.

Q. Now, do you know what points the vessel touched at first?

(Objected to as irrelevant, immaterial and incompetent.)

A. They had to stop and take off some soldiers.

Q. Were you on board the vessel when she stopped at this place before she reached Valdes?

A. No.

Mr. CAMPBELL.—Then I object to it.

The WITNESS.—I thought you meant after.

Q. (Mr. MARTIN.) Go ahead and state what you know of the vessel stopping at points before you got on.

Mr. CAMPBELL.—We submit it is absolutely impossible for this witness to have any personal knowledge of that, and he said he got on at Valdes.

A. I don't know only what they said that they stopped and went back to Seward, they told me that—I only know that they went back because we were waiting at Valdes.

Mr. CAMPBELL.—We object to this as encumbering the record.

Mr. MARTIN.—Do you deny that they went to Seward and stopped there and the other places and took on Chinamen and fishermen and the Japs?

(Testimony of Hade Roark.)

Mr. CAMPBELL.—I am not testifying in the case, but I think you are violating the rules of evidence and the rules of law when you attempt to have this witness testify to something which he could only know from what some one said to him that was on the boat, and they did not know it except by hearsay.

Mr. MARTIN.—Well, most everything we do know is that way.

Mr. CAMPBELL.—It makes it incompetent.

The WITNESS.—I only know what they said about that.

Mr. CAMPBELL.—I want the same objection.

Mr. MARTIN.—All we want is the truth.

The WITNESS.—They told me they did, and all I got is their word for it.

Mr. CAMPBELL.—I move to strike it out as hearsay.

Q. (Mr. MARTIN.) I will ask you to examine passengers' exhibit "C," and state if that is your signature there, Mr. Roark? (Showing.)

A. That is it.

Q. Were you present when those other passengers and claimants here signed that?

A. Yes, sir; we were all together there.

Q. That morning?

A. The next morning, after we came off.

Q. It was signed up in my office, wasn't it?

A. Yes, sir.

Q. These other parties there that came up with you that signed that exhibit, were on the boat with you? A. They were right there.

(Testimony of Hade Roark.)

Q. Now, did you see them sleeping around on the floor?

(Objected to as leading and irrelevant, immaterial and incompetent.)

A. Yes, sir; they didn't have any better accommodations than I did, that is, that I noticed.

Q. About how many people did you see, sleeping around on the floor and on the hatches and places like that without berths?

Mr. CAMPBELL.—I object to that as irrelevant, immaterial and incompetent, and as having no bearing on the measure of damages.

A. About thirty or forty, the way it looked to me. I didn't count them, but I know there were quite a number of them.

Q. Now, state whether or not you suffered any from cold and inconvenience from want of sleep or from sleeping that way.

(Objected to as leading.)

A. We did, certainly.

Q. Describe it so that the Court can get an idea of it.

A. A man without nothing to get to eat and cold when he goes to bed at night and the water washing down on him would not feel very comfortable.

Q. Was it damp there?

A. The water would come down right in his face lots of times when it would wash over the top of the hatch.

Q. How long were you on that trip?

(Testimony of Hade Roark.)

(Objected to as irrelevant, immaterial and incompetent.)

A. Twelve or thirteen days coming down.

Q. What did you observe as to the cleanliness around there where you were sleeping?

A. It was not clean by no means; the dogs vomiting there and not cleaned off that I saw at any time we were on there; it didn't look like it was.

Q. What, if any, bad odors did you notice from it?

(Objected to as leading.)

A. Well, the closet was all filled up where the Chinamen and Japs had been in there and was running over and washing in that salt water and it didn't wash clean.

Q. Describe the condition of the closet.

A. Well, it was about as bad as you could make it.

Q. That does not convey any idea. Describe it as near as you can.

A. It was filled clean up to the top and running over.

A. The sink part where the Japs and Chinamen would get up on there with their feet, to get a crap, I I suppose, and fill it up.

Q. Did you see any of the excretions running over on the floor?

A. Yes, it ran over quite often, and they would wash and spill water in there and it was sloppy and wet.

Q. And what effort was made to keep it clean, if any?

A. There was not any that I saw.

(Testimony of Hade Roark.)

Q. If there had been, would you have noticed it?

A. I would have noticed it.

Q. Describe the condition of it.

A. You could smell it just the same as you could a closet when you would go in there, only it smelled worse than a closet which you would keep cleaned up and connected with the sewer.

Q. How about the food?

A. What meat I had I would cut the outside of it off and I ate just what I could get along with on the inside, and sometimes I could not eat any.

Q. What did you do that for?

A. Well, it was rotten on the outside and it would sicken your stomach; it was so strong you could smell it.

Q. To what extent?

A. It was so strong I would not taste any of it unless I would cut it all off on the outside and then it tasted tainted on the inside, too.

Q. What was the condition of the other victuals?

A. Well, the others were not so bad as that; they were bad enough anyway.

Q. Describe fully what you had to eat and what the condition of it was.

A. Well, they had mulligan, mostly, and they would have the meat cut up in chunks and put in there, and potatoes.

Q. How was that?

A. Well, that meat would kill the whole thing—it would smell so strong it would make the whole mulligan smell—you could smell the meat.

(Testimony of Hade Roark.)

Q. Did you suffer any from hunger?

(Objected to as leading.)

A. Yes, sir, I did; I could have eat most any time, but I didn't eat.

Q. To what extent? Describe your sufferings fully.

A. Quite a lot. About as bad a way as a man can punish himself is not to have enough to eat. I know that, because I have toughed it and roughed it all my life, but I never was up against any harder proposition than that; in the Spanish-American army when they didn't have two meals a day half the time, you didn't have that—it was far ahead of this.

Q. Whereabouts was that?

A. In the Chickamauga Park.

Q. What was the condition of your health when you went aboard the vessel?

(Objected to as leading.)

A. I didn't feel very good all the way down. I didn't feel so bad either, to speak of.

Q. What was the condition of your health when you got in here?

A. I was not feeling very good either when I got off; I was wore out from sleep and something to eat; you might say, and I could not eat much either when I got off.

Q. Why not?

A. My stomach was out of whack from some reason or other; from not eating enough or the condition of the meat and stuff coming down.

(Testimony of Hade Roark.)

Q. What, if anything, did you notice unusual about the vessel?

A. Well, I didn't notice anything only they started on the outside and came in on the inside passage from Juneau—they claimed it was leaking—I didn't see it.

Q. They claimed it was leaking?

A. Yes, that was the news on the boat; of course, I didn't see that.

(Objected to, and motion to strike out as hearsay.)

Q. What, if anything, did you notice or hear about the boilers?

A. Well, they were the ones that were leaking—I know they were repairing one one night, and they kept up steam in one of the boilers while they were fixing the other one—that was what they told me—I didn't see that—I was not in there.

Q. Did you hear the pumps going?

A. Yes, you could hear them working, pumping; I don't know much about machinery myself.

Q. They started on the outside passage, did they?

A. That is what the fellow told me—the man that sold me the ticket said they were going outside.

Q. And instead of going outside they went on the inside?

A. I asked him how long it would be and he said about six days coming down. I could have got a first-class ticket, but there was not any to get, that was the reason I came down that way; when I got in there there was only three tickets left, one first class and two second, and the fellow that was with me, he

(Testimony of Hade Roark.)

said he couldn't stand it to go second class and I told him to take the first class.

(Objected to and motion to strike out as irrelevant, immaterial and incompetent.)

Q. What, if anything, did you see about the shortage of food?

(Objected to as leading.)

A. Well, there was lots of times that, such as it was, it was short. There was three or four tables of them and if you didn't get there first you would not get enough to eat of it, such as it was.

Q. What did you notice of them taking on food at Juneau?

(Objected to as leading.)

A. They took on some.

Q. What did they take on?

A. Some halibut, I guess it was; and some meat and provisions.

Cross-examination.

Q. (Mr. CAMPBELL.) Mr. Roark, what the agent told you when you bought the ticket was that she probably would go on the outside passage?

A. He said she was going; I asked him how long it would take, and he said about six days.

Q. Did he say anything about the condition of the weather controlling that?

A. He never said anything—I had just asked him—I wanted to know—I went up inside.

Q. You wanted to know which way she was coming down?

(Testimony of Hade Roark.)

A. I wanted to know which way she was coming down.

Q. Have you been traveling on that run very much?

A. That was the first time I ever was up there.

Q. What had you been doing that summer?

A. Well, I was up there—I was 41 miles from Valdes; I worked in a road-house.

Q. What kind of work?

A. Building part of an addition to a road-house.

Q. As a carpenter?

A. Well, it was logs we were building it out of—I am not a carpenter.

Q. When you bought your ticket the vessel had not arrived in port yet?

A. No, sir; it was a day or so before the vessel came in.

Q. Were you down at the dock when she came in?

A. No, I was not there.

Q. When did you go aboard her?

A. The next morning after she came in—she came in that night.

Q. Were you in company with Avery at that time?

A. No, sir; I met him on the boat.

Q. What did you do when you first went aboard the vessel?

A. I went in there rubber-necking around waiting for them to leave.

Q. First thing, you went down in the steerage quarters, didn't you? A. I went down in there.

(Testimony of Hade Roark.)

Q. Did you search for a berth at that time?

A. I looked around; that is, I didn't search; there was no one there to see about it.

Q. Did you look around for a berth?

A. I saw it was pretty well filled up; there was a place that they could have filled up if they had them.

Q. All the berths you saw at that time, they were filled up?

A. No, sir; there was fellows there that got off—fellows were lying in the berths—fishermen.

Q. Well, the berths were either filled with men or filled with baggage, so that they were not vacant.

A. Some were and some were not.

Q. Didn't you notice when you first went down in the steerage quarters that all the berths were then taken?

A. No, I didn't know it.

Q. You didn't know it?

A. Well, I supposed they were going to make a place.

Q. Didn't you know at that time that all the berths that were then up in the steerage quarters were taken.

A. No, sir; I didn't know—how could I know?

Q. Could you see?

A. Maybe there was berths that fellows were not in and maybe—

Q. Did you make any inquiries?

A. We did, after we got started.

Q. After you got out to sea?

A. Well, they started right away after I got down there.

(Testimony of Hade Roark.)

Q. They didn't start for an hour?

A. Well, probably an hour, I don't know exactly.

Q. In that hour you did not pay any attention to it at all?

A. They are supposed to furnish you a berth, aren't they?

Q. I am not testifying—you are testifying and I want you to answer my questions. You did not make any effort you say during that hour?

A. There was no one there to see anyway if I did.

Q. Had you ever traveled steerage on those boats?

A. That was the only time I was ever on the boats.

Q. You do not know what the custom is so far as securing a steerage berth is concerned?

A. That fellow told me that I would get a berth when I bought the ticket.

Q. You do not know what the custom is as to the steerage passengers going aboard the vessel and selecting their own berths, because you never traveled steerage before?

A. I never did.

Q. Didn't you hear an announcement made aboard the vessel that there were no berths for the steerage passengers from Valdes and that those who wanted to go would have to take their chances of getting a place to sleep?

A. No, sir, I never heard that.

Q. You didn't hear it?

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(Testimony of Hade Roark.)

A. No, sir; they claimed they said that, but I never heard it if they did; and I never heard anyone else that heard it.

Q. We will produce one of your own witnesses who has testified to that.

A. Well, I didn't hear it.

Q. Didn't you see a sign posted on the docks that no berths were left for Valdes steerage passengers and that you would have to take chances?

A. No, sir.

Q. Didn't you hear members of the purser's and steward's crew going among the passengers and stating that?

(Objected to as irrelevant and immaterial.)

Q. —and announcing that fact?

A. No, sir. They claim they did, but I never heard it. If they did I didn't hear it.

Q. (Mr. MARTIN.) When you spoke of saying that they claimed they did you mean that they said that in the Superior Court?

A. That is what they said up there, but I didn't hear anything of the kind.

Q. You mean they said that in the Superior Court in the other case?

A. That was the first I heard of it when I was up there.

Q. (Mr. CAMPBELL.) You say you didn't have a berth the first night?

A. Well, we never had a berth at any time.

Q. Answer the question.

(Testimony of Hade Roark.)

Mr. MARTIN.—I submit that he has answered the question.

A. I didn't have any.

Q. (Mr. CAMPBELL.) Before you found that you didn't have a berth that first night, or after you found you didn't have a berth the first night, did you go to the steward or the purser and make a complaint?

A. I went to the purser and there was dozens of others went to him.

Q. Did you go to him?

A. I went to him.

Q. What did he say to you?

A. He walked right off and left me talking to him.

Q. He never said a word?

A. He grinned and muttered something and turned around and walked off from me.

Q. What kind of a looking man was he?

A. That little red-headed guy that was up there the other day; the freckled-face fellow.

Q. What did you do then?

A. What did I do—what could I do? I didn't do anything.

Mr. CAMPBELL.—I will ask the commissioner to instruct the witness to answer my questions.

A. I was on there and I had to stay there; that was all I could do.

Q. Well, what did you do?

A. Well, we hunted up the best quarters we could find.

(Testimony of Hade Roark.)

Q. Where was it?

A. On the baggage.

Q. Down on the steerage quarters?

A. Down in the hatch.

Q. Down in the steerage quarters?

A. The steerage; yes.

Q. Was it down in the steerage quarters?

A. I don't know whether you would call it quarters or halves.

Q. You don't know what quarters mean—I mean down where the steerage passengers sleep.

A. It was down where the Chinese and Japs were.

Q. Down where the steerage passengers were sleeping? A. Yes.

Q. And this baggage was piled up in the nose of the vessel? A. Piled up in one corner.

Q. Did you make any complaint next day?

A. Well, I didn't; no.

Q. So that the only complaint you made was the time you spoke to the purser?

A. I spoke to the first officer once, and I heard so many others talking to him that I didn't say anything more about it; I thought that it was no use.

Q. Well, who else?

A. I don't know the name—I was a stranger there myself—I didn't know any of them. I could tell their faces when I see them.

Q. How many did you hear talking to him?

A. I know everybody on there was roaring and kicking about having no place to sleep.

(Testimony of Hade Roark.)

Q. To the first officer?

A. To the officer and purser, either one.

Q. You say that these dogs were vomiting?

A. Yes.

Q. And you saw them vomiting?

A. Yes, I was as close to them as that gentleman from me.

Q. And it was not cleaned up all the way down?

A. It probably was cleaned up once or twice.

Q. Was it cleaned up?

A. Well, it was smeared all over the floor. I don't know whether they cleaned it or walked in it probably and mashed it down. I didn't see anyone clean it.

Q. It was not cleaned?

A. It was not cleaned.

Q. And you slept there alongside of it night after night with it staying there?

A. Within four feet of it.

Q. You knew that there were steerage passengers sleeping in the social hall, didn't you?

A. Well, they told me they did. I didn't sleep there.

Q. Didn't you see them there?

A. I saw them lying up there. I don't know whether they were steerage or what they were.

Q. Didn't you know that they were steerage passengers? A. I didn't ask them.

Q. As a matter of fact, didn't the purser and steward tell you that you could sleep in there, in the social-hall?

(Testimony of Hade Roark.)

A. They didn't tell me nothing at all.

Q. They didn't tell you anything at all?

A. They didn't tell me anything at all.

Q. You had the free run of the vessel, didn't you—you could go all over the vessel?

A. I didn't try to. I don't know whether I could or not.

Q. Where did you go—did you just stay there?

A. I got my head out of that hold as much as I could to get the stink blown off as much as I could.

Q. You mean you came up on deck?

A. Got up where the air was good.

Q. Did you spend your time up on the deck or down in the steerage?

A. Up on deck most of the time.

Q. You were down in the steerage only when you were sleeping and eating?

A. I didn't stay there any more than I had to.

Q. Answer my question.

A. I was up on deck most of the time, and sometimes it would be raining and blowing and you would have to get down there.

Q. Did you go up in the smoking-room?

A. I was in there; yes.

Q. You went in there quite frequently?

A. Well, we were crowded so full there you could hardly get in there.

Q. You went in there every time you could get in there?

A. Not every time I could. I went in there a few times.

(Testimony of Hade Roark.)

Q. Didn't you spend the greater part of your time in the smoking-room?

A. I was in there two or three times.

Q. Nobody put you out?

A. No, sir, they never put me out.

Q. Did you try to walk around the rest of the vessel, around aft on the raised deck?

(Objected to as incumbering the record.)

A. I never tried that.

Q. Did you go back to the toilet-room of the first-class passengers?

A. I did after a few days, after we could not get into the other, we had to go somewhere.

Q. Nobody prevented your using the first-class toilet-room?

A. They didn't say nothing to me.

Q. You say that they gave you mush for breakfast?

A. Sometimes they did.

Q. Did they give you any small steaks for breakfast?

A. Not any steak; no, sir. We had that same old mulligan day in and day out while I was in there.

Q. Did they give you fresh meat after leaving Juneau?

A. No, sir; there was not a bit to eat—they still had some of the rotten left, I guess. I never saw any difference in it.

Q. You had potatoes?

A. Yes, we had potatoes.

Q. And you had some bread and coffee?

(Testimony of Hade Roark.)

A. I don't know whether you would call it bread or not—it was sour dough—supposed to be bread.

Q. The same sour dough that you had been used to eating up in Alaska?

A. No, sir; I never ate it.

Q. When you were bumming before?

A. Bumming? I never was on the bum in my life.

Q. You are very familiar with the term “bum”—you know what it means?

A. I don't know. I never bummed anything yet.

Q. Then what did you mean when you said the boat was on the bum?

A. That what was on the bum?

Q. When you spoke of the boat you said it was on the bum—that was your first statement.

A. The meat I said was bum—well, the boat was.

Q. What did you mean by on the bum?

A. Well, it was no account—if you know what that means. That is the same boat that came back the other day. Now, what did it have to come back for if it wasn't on the bum?

Q. You know nothing at all about what happened the other day except what Mr. Martin may have told you what he put in the paper?

The WITNESS.—She had eight foot of water in it and it would have sunk if it was going the other way.

(Testimony of Hade Roark.)

Q. As a matter of fact, you don't know anything about it?

A. I might know a little about it.

Q. Were you down there and saw that eight foot of water in her? A. I was not.

(Counsel for petitioner moves to strike out the testimony of the witness on this point as hearsay.)

Q. You are living up in the country somewhere?

A. Not exactly.

Q. Where are you living?

A. I live up at Sylvana.

Q. And you read this in the "Seattle Daily Times," didn't you? A. Yes.

Q. And you saw that Mr. Martin was quoted as giving this information?

A. If it was not so they could catch him; there must have been something in it or he would not have said it.

Q. Now, the steerage quarters may have been cleaned out while you were on deck?

A. I did not see it. I could not say whether they were or not.

Q. I say they might have been cleaned out while you were on deck?

A. It didn't smell that way when you would come down.

Q. This smell was largely due to the seasickness of the passengers and their vomiting?

A. I didn't see any passengers seasick, not so as to throw up in there.

Q. You didn't see any throwing up downstairs?

(Testimony of Hade Roark.)

A. I didn't see it; they may have been.

Q. When Mr. Avery testifies that he saw them throwing up there every day he was mistaken?

A. I don't know. I was out all the time that I could get out.

Q. You were out practically all the time except when you went down there to eat and sleep and you do not know what took place in the meantime?

A. Well, I was down there, through there in and out and around lots of times. I would have to go down there.

Q. You do not know anything about what took place down there while you were on deck?

A. I didn't see it and I don't know whether anyone threw up there or not.

Q. I say you do not know anything about what took place down there while you were on deck?

A. While I was up on deck I could not be there and see what was going on down there; no.

Q. Did you take those dogs out on deck at all?

A. No, sir.

Q. They were put on deck, were they not?

A. Someone had taken the dogs.

Q. And then the passengers would bring them down again?

A. Someone brought them down again.

Q. Wasn't it the passengers that brought them back?

A. It was a first-class passenger I believe it was.

Q. Was it a passenger that brought them back?

(Testimony of Hade Roark.)

A. I believe it was a passenger that brought them back.

Q. And the crew would take them out?

A. The fellows down there would—turn them out loose.

Q. Didn't you see the crew take them out on deck?

A. No, sir, it was some of the passengers turned them loose at the time I saw it.

Q. When you say the pumps were working, you inferred that from seeing the water coming out of the side of the vessel?

A. No, sir, I know what caused it.

Q. You saw the water coming over the side?

A. The pumps did not throw it over the top of the hatch.

Q. I mean the water which you saw coming through the side of the vessel—didn't you see water squirting out the side of the vessel?

A. You see that on any boat.

Q. You saw that on this vessel?

A. Yes.

Q. And that was why you thought the pumps were working when you saw that?

A. No, sir, I didn't think that at all.

Q. Did you see the pumps working?

A. I was not down there to see the pumps working.

Q. That was only what someone told you?

A. The chief engineer complained that one of the boilers was out of order—and he was a pretty good authority.

(Testimony of Hade Roark.)

Q. Is he a pretty good authority?

A. Yes, he ought to be a good authority.

A. He ought to be good authority?

A. Yes.

Q. And what the chief engineer says ought to be right?

A. He ought to know. I know that they didn't run one whole night; they drifted back instead of going forward.

Q. How far did they drift back?

A. I could not say; I did not measure it.

Q. Were you up all night to see it?

A. No, but I know the next day they claimed that they were not as far as they were the night before.

Q. Who claimed that the next day?

A. Well, different ones of them.

Q. Who?

A. I didn't ask their names. I didn't think about this thing coming up.

Q. Some of the passengers?

A. Well—

Q. Passengers?

A. I don't know whether they were passengers or who it was.

Mr. CAMPBELL.—I move to strike this out as being hearsay.

Q. There was a pretty big sea on there on the trip down? A. Yes, sir; it snowed quite a lot.

Q. There was a big sea?

A. I suppose there was. The old captain said it was, and he ought to know.

(Testimony of Hade Roark.)

Q. And the water washed up on her and came over her? A. It came over once in a while.

Q. This spray which would come on your faces was spray which would come down from the hatch that was open for ventilation?

A. Well, I suppose that was where it came from. I know it came in on us.

(Testimony of witness closed. Whereupon further proceedings were adjourned until Thursday, March 26, 1908, at 2:30 P. M.)

Thursday, March 26, 1908, 2:30 P. M.

Continuation of proceedings pursuant to adjournment. All parties present as at former hearing.

[Testimony of Emil Stank, for Claimants.]

EMIL STANK, one of the claimants, produced as a witness in behalf of claimants, being first duly cautioned and sworn, testifies as follows:

Q. (Mr. MARTIN.) Were you a passenger on the steamship "Santa Clara," leaving Alaskan ports on the 6th day of October, 1906, and arriving in Seattle on or about the 20th of October, 1906?

A. Yes, sir.

Q. Where did you get aboard?

A. In Valdes.

Q. Did you have a ticket? A. Yes, sir.

Q. What did you pay for it? A. \$25.

Q. What did you do with the ticket?

A. Well, while I was on board the day after that the steward took it up.

(Testimony of Emil Stank.)

Q. I will ask you to look at that ticket in this bunch with the name of Emil Stank and say whether that is your signature, number 158 (showing.)

A. Yes.

Q. Where did you go aboard?

A. In Valdes.

Q. Did many others go aboard at Valdes?

A. Yes, sir.

Q. Now, did you have a berth on that trip?

A. No, I never got it.

Q. Where did you have to sleep?

A. I slept on the floor.

Q. Was there many of those parties slept on the floor?

(Objected to as irrelevant and immaterial.)

A. Yes, sir.

Q. About how many do you think were sleeping on the floor?

(Same objection.)

A. Where I slept there was six or seven.

Q. Sleeping where you slept? A. Yes.

Q. On the other parts of the vessel how many were sleeping on the floor?

A. I don't know. I never was many places except one—they kept me most of the time over there in the corner.

Q. There were six or seven sleeping on the floor in the corner where you were?

(Objected to as leading.)

A. Yes, maybe more; I don't know.

Q. What did you sleep on?

(Testimony of Emil Stank.)

A. I got my blankets.

Q. What was the condition of the floor where you slept?

A. It was all the time wet and slippery; it was wet. Them Chinamen they had been eating over there and they left some of the potato peelings and it was all kind of slippery.

Q. Now, tell what part of the vessel this floor was that you slept on.

A. It was kind of slippery, swampy—it was on account of them Chinamen, they had been eating over there and left some kind of potatoes and the dogs was lying over there—they had been throwing these dogs meat and that meat was lying over there.

Q. Did you see any vomit there on the floor?

(Objected to as leading.)

A. I don't know what it is.

Q. Did you see anything thrown up—puke?

A. Yes.

Q. Describe that.

A. It was all lying there—some fellows been throwing it around with the feet and they push it to one side and it was all swampy.

Q. What kind of a place was that to sleep?

(Objected to as calling for a conclusion of the witness.)

A. Them hatches been open sometimes and on the night they have canvas, and one time there come water down, and in the daytime they have the hatches off and at night-time they throw some kind of a canvas over it.

(Testimony of Emil Stank.)

Q. Did you get your clothes wet?

A. One time water fall close to me and then I was lying a little forward of the corner and I don't get it, but many fellows they get it.

Q. Was that a comfortable place to sleep?

(Objected to as leading.)

A. No, it was not.

Q. State how it felt to sleep there.

A. After midnight them deckhands they throw the canvas over—before that it was windy and the wind come down and it was cold.

Q. Did you suffer any from loss of sleep?

(Objected to as leading.)

A. Yes; I was pretty near always sick.

Q. Go on and tell the Court how sick you were and how it acted on you and everything.

A. Well, I was all sick and I can't eat much.

Q. How long were you sick?

A. I was pretty near all the way, pretty near until after Juneau. I was a little better when we got to Juneau.

Q. What kind of food did they give you to eat?

A. They gave us mulligan stew; that was the most what I saw there.

Q. How was that?

A. Nobody wanted to eat much, only a little bit, and it was some kind of sour.

Q. Did it smell?

(Objected to as leading.)

A. It smell kind of sour.

Q. You can't talk English very well, can you?

(Testimony of Emil Stank.)

A. No.

Q. Are you German? A. German.

Q. Did you suffer much from hunger?

(Same objection.)

A. Yes, for a couple of days after Juneau I was a little better.

Q. Were you around the deck much?

A. In the day-time most of the time; there was no place to sit around there.

Q. Were there many people around there?

A. It was all full up and there was no room to stay down below and some men want a passage and they keep going and there was no room to stay down below.

Q. You mean that they wanted to keep the passageways open? A. I don't understand.

Q. Tell how it was down there.

A. It was a small place; so small that one man can pass and only one man, they have got to go around, and sometimes the other man want to go in there too and before the other man pass him.

Q. Not room enough to pass? A. No,

Q. How did it smell down there?

(Objected to as leading.)

A. It was some kind of a swamp and that dirt on the floor, they throw it sometimes under them bunks.

Cross-examination.

Q. (Mr. CAMPBELL.) You say that you were sicker going from Valdes to Juneau than you were from Juneau coming down? A. Yes.

Q. From Juneau coming down you felt better?

(Testimony of Emil Stank.)

A. That is I feel a little better; yes.

Q. This hatch, you say, was covered up at night with the canvas? A. Not all the time.

Q. At night it was covered up?

A. Most of the times in the morning; sometimes it was open too—most of the time it was covered over with canvas.

Q. And when the canvas was off the fresh air came down through there? A. Yes.

Q. What time did you go aboard the vessel?

A. I don't know exactly; it was between eleven in the evening and three o'clock in the morning. I don't know exactly what time.

Q. What had you been doing up there in Alaska? (Objected to as irrelevant, immaterial and incompetent.)

A. I was working in the mining in Chicken Creek and the Forty Mile country.

Q. Didn't you hear the crew announce on board the vessel that there were no berths for steerage passengers from Valdes?

A. No. It was midnight when I go on board and the watchman was outside and I put my bundle and I say to the watchman, I said, "There is no room?" and he said, "There is room to be fixed in the morning."

Q. Who said so?

A. The watchman that was outside.

Q. He told you that at that time there was no berth?

(Testimony of Emil Stank.)

A. He didn't tell me nothing. I told him there was no berths, no bunks, and he say he go and fix them next morning.

Q. You knew at that time there was no berths on the vessel—at the time you went aboard you knew there were no berths for steerage passengers from Valdes, didn't you?

(Objected to as irrelevant, immaterial and incompetent.)

A. He tell me that they fix it in the morning. He tell me that he going fix the bunks.

Q. You knew there was none?

A. I walk all over; I cannot see any empty bunks.

Q. You could not see any berths at all?

A. No.

Q. You traveled steerage before?

A. I was on the "Humboldt" going to Skagway.

(Testimony of witness closed.)

[Testimony of A. O. Johnson, for Claimants.]

A. O. JOHNSON, one of the claimants, produced as a witness in behalf of claimants, being first duly cautioned and sworn, testified as follows:

Q. (Mr. MARTIN.) Were you a passenger on the steamship "Santa Clara" leaving Alaskan ports about the 6th of October, and arriving in Seattle about the 20th of October, 1906? A. Yes, sir.

Q. Where did you go aboard, Mr. Johnson?

A. How do you mean?

Q. Where did you get on the vessel?

A. At Valdes.

(Testimony of A. O. Johnson.)

Q. Did you have a ticket? A. Yes.

Q. What did you pay for it? A. \$25.

Q. You paid \$25 for your ticket?

A. Yes, sir.

Q. I will ask you to look at ticket No. 154 in this bunch marked exhibit "D" and I will ask you to say whether that is your signature (showing).

A. Yes, sir.

Q. Did you notice about how many got on at Valdes?

(Objected to as irrelevant, immaterial and incompetent.)

A. No, not exactly.

Q. You saw a good many getting on there?

A. Yes, I was on there, I guess, about the first one, and I seen quite a number get on.

Q. About how many got on there at Valdes?

(Same objection.)

A. I saw about twenty, but still there were lots got off and on and I could not tell, but I saw that many with bags, I could not say—exactly remember—but somewhere along there.

Q. Did you have a berth? A. No, sir.

Q. Where did you sleep, Mr. Johnson?

A. I slept on the floor about amidships—that is, part of the time, during the first off.

Q. And then where did you sleep?

A. I slept on the table one or two nights, but it was a hard place to get because the flunkies occupies that table down the steerage—the flunkies did them-

(Testimony of A. O. Johnson.)

selves—I guess there was half a dozen workaways and they occupied that.

Q. That was considered an advantageous point to sleep on?

A. You could not sleep more than a minute before you would get rolled off. I tried it, but got rolled off several times and then I slept on the floor about amidships.

Q. Still you would be up out of the dirt and slime on the table?

(Objected to as leading.)

A. Yes.

Q. Just go ahead and tell the condition of it, how things looked when you got aboard.

A. Everything was packed and every bunk was occupied, and I guess there was about half a dozen of them vomiting around there, those fishermen; they were drunk.

Q. The fishermen were drunk?

A. Yes, they were drunk and I stayed on top of the deck until late in the evening, and I went down there and the smell was something awful, but they closed the door and they left it open about six inches and they had a chain on it, because it was so rough, and we had to stay in there, and I laid down below and the next day I was sick, and I was sick until I got to Juneau, and then I felt a little better, and we laid there half the night and part of the next day at Juneau and then we started by the inside, and it got smooth and I got to feeling better and I tried to get something to eat and I had a hard time of it.

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(Testimony of A. O. Johnson.)

Q. Now, before we come to that, describe the condition of the vessel down there where you were as to cleanliness.

A. Well, in the first place, the Japs had one part of it and the Chinese the others, and between the two of them there was a couple of dogs in there that made it pretty bad, and certainly it was sloppy and wet all over the steerage department.

Q. What effort did you see them make to clean it up?

A. Well, we reported it; we told the steward and another fellow that came around, I think it was the chief or the second steward. I think it was, and he said he would do this and do that but there was never anything done, and then at last there was three or four of them went up to see the captain and I didn't hear much what they done, but I know there was nothing done there afterwards.

Q. They made complaint to the steward first?

A. Yes.

Q. And then to the captain? A. Yes.

Q. And when, if at any time, did they clean it down there?

A. Well, they didn't clean it until we got, I think, within about a day of port here.

Q. Before the inspectors got around?

A. Yes; they opened it up and cleaned it out, I think it was a day, maybe it was the same day, we landed. I think it was the same day, because we landed here in the evening.

(Testimony of A. O. Johnson.)

Q. Did you see many other people in that department sleeping without berths?

(Objected to as irrelevant, immaterial and incompetent.)

A. Well, they were all around me; all the tables were occupied and in between the aisles was occupied, and in the boiler-room I think there was six or seven sitting on that open part on the top of the boiler; it was kind of corrugated screen above the boiler and about six or seven sat up there and slept all night, and then around the steps there was always two or three lying there.

Q. How was the air down there?

A. Well, you might know it was pretty bad when they closed it up. When we left Valdes it was rough. Describe it as fully as you can.

A. I was not down there an hour before I was sick, and I was sick until I got to Juneau; it was bad.

Q. The air was?

A. Yes, everything was closed up.

Q. Did you notice any odors down there?

(Objected to as leading.)

A. I certainly did; it was so close I could hardly get my breath in there—I could not mention the name of what you call the odor.

Q. Well, describe it as fully as you can and how it smelt to you.

A. Well, it was like you would get into a close department; that was the way it smelt.

Q. Did you notice any spew on the floor?

(Objected to as leading.)

(Testimony of A. O. Johnson.)

A. I should say it was all through there when I came in.

Q. Describe how it was all the way.

A. Well, all the aisles were vomited all over in the center of the aisles and then from the table everything was shaken on the outside of the aisles. I think there was three aisles, and you could not stand in there it was so wet from the vomit and what was spilled around from the tables, and then the stuff that the Chinamen carried through there—the Chinamen had theirs at the forward part of the boat, and the Japs.

Q. How was the food?

A. Well, I could not get anything until about the fourth turn, and then there was not anything left, and what was left was not fit to eat; I could not eat it—all that I ate was bread.

Q. What was the condition of that?

A. It was pretty poor; it was dried up and it was not baked right, and once or twice I got soup—that is, there was some left, and I could not eat it.

Q. What was wrong with it?

A. It tasted stale.

Q. How did it smell?

A. Well, if you were down there you could not smell anything, because everything smelled alike down there; it was a rocky mess all the way through.

Q. Did you suffer much from the want of sleep?

A. Well, I didn't sleep practically hardly any on the whole trip.

Q. You didn't?

(Testimony of A. O. Johnson.)

A. No. The last couple of days I got to lying on the floor and that was what sleep I got.

Q. What kind of a place was that to sleep?

A. Well, I slept on an overcoat on the floor in amidships near the stairway coming down, near the boilers—I think it was amidships, what you call amidships.

Q. Describe what, if any, suffering you endured from hunger.

(Objected to as leading.)

A. Well, once or twice I bought a pie from the steward, and that was the only thing that I had that helped me out, that gave me any relief, and I went in there once and I got kicked out by one of the officers from the upper deck—I think it was the steward or mate of some kind. I went in there to buy a pie and I didn't get any after that.

Q. What do you know, if anything, about a shortage of provisions?

(Objected to as leading.)

A. Well, they told us that when we first got aboard.

Mr. CAMPBELL.—I object to that as assuming something as a fact which is not in evidence.

A. When we were out to sea and they didn't give us anything we asked the chef if he could not get us something, and he said they were short; I think it was the third turn that I got a chance to get to the table, for those fellows in the bunks they occupied the aisle and as soon as he touched the bell they all fell out, and it took three turns before they were done.

154 *The Northwestern Steamship Company, Ltd.*,
(Testimony of A. O. Johnson.)

Q. So that the regular passengers were not able to eat until after the fishermen got through?

(Objected to as leading.)

A. Not until after the fishermen got through the passengers were not able to eat, because the fishermen occupied the bunks and the passageway, and there was nobody else could get in there until they got through.

Q. Do you know whether or not they were employed by the company?

(Objected to as irrelevant, immaterial and incompetent.)

A. That is what they said they were, they were employed by the company.

Mr MARTIN.—I suppose you will admit they were employed by the company.

The WITNESS.—They said they had their fare paid.

Mr. CAMPBELL.—No, sir; they were not, and we move to strike out his answer as hearsay—they were not employed by the company—they were passengers just as much as this man was.

Mr. MARTIN.—Who were they passengers for?

Mr. CAMPBELL.—I suppose for themselves; they were not employees of the Northwestern Steamship Company.

Q. (Mr. MARTIN.) State whether or not they were given the preference on the boat.

A. Well, they had everything their way because they had the bunks, and the bunks was right along where they ate—I guess there was not two feet of

(Testimony of A. O. Johnson.)

room, counting the table and all, because you had to go sideways and they were all in those bunks, and they each put their feet out as soon as they put anything on the table, and as soon as he touched the bell, down they would be, and then the next would be the same way from the other bunks; they would all come over, so that there was no chances for an outsider to get anything until the third or fourth turn, and then there was not anything left, and the chef says, "We are short," and we had to cut down, and we had to take what was left.

Q. Was that, generally speaking, true of the rest of the passengers?

A. Yes; those that didn't have bunks, only the ones that had bunks were fishermen.

(Objected to, and motion to strike out as hearsay.)

A. (Continuing.) As far as I could see—there may be one or two that had bunks, but I didn't know of any.

Q. Now, look at the signature A. O. Johnson, on exhibit "C" (showing); is that your signature?

A. Yes, sir.

Q. You recognize those other names there?

A. Well, I was there when they all signed.

Q. And did you go aboard with those same fellows?

A. With the most of them; some of them got on at Seward; I know quite a few of them from Seward.

Q. Where did the rest of them get on?

A. Valdes.

(Testimony of A. O. Johnson.)

Q. Did any of these passengers that got on at Valdes get berths?

(Objected to as irrelevant and immaterial.)

A. No, sir; because I was the first one getting down there, and I saw most of them getting on with their bags after I was on, and I investigated the whole thing when I got on and I could not find anything.

Q. Now, were you present when these gentlemen signed this? A. Yes.

Q. Are those the same parties that were on the boat? A. Yes.

Q. And what accommodations did they have, if any, different from what you had?

A. They didn't have any different from mine.

Q. Just the same as yours?

A. Just the same as mine.

Q. Did you suffer any from cold on the trip?
(Objected to as leading.)

A. Yes, I did.

Q. Describe it as fully as possible.

A. Well, I was all choked up in my head and I was certainly in a bad condition all the way through. I was not able to get about hardly for want of having a place to sleep.

Q. What was your condition of health when you went aboard? A. Pretty good.

Q. What was it when you got off in Seattle?

A. Well, I was pretty shaky; and after we got to Juneau they said we were going to get provisions on, but it didn't get any better.

Q. It didn't get any better after you got to Juneau?

(Testimony of A. O. Johnson.)

A. It didn't get any better after we got to Juneau.

Q. You did see them taking provisions on there? A. Yes.

Q. That all went to the first-class, did it?

(Objected to as leading.)

A. I did not say whether it did or not.

Q. Now, what do you know, if anything, about the unseaworthiness of the vessel?

(Objected to as leading.)

A. Well, I noticed we were in one place pretty near all day.

Q. You were? A. Yes.

Q. What was the matter?

A. Well, they said she was taking in two feet of water an hour.

(Counsel for petitioner moves to strike out as hearsay.)

A. (Continuing.) And they only had one boiler on for a long time and they said they had to use the steam of that to keep the pumps going.

(Same motion to strike by counsel for petitioner.)

Q. Who did you hear say that?

A. I was right in the boiler-room; that was where I stayed most all the time on the top of the screen.

Q. Did you hear the engineer say that?

A. I heard the fireman.

Q. Men that were working there in the engine-room?

A. Yes, men that were working there, and I seen them working on the boilers; I seen there was only one boiler in operation and we were going very slow, and I think we went in one place pretty near all day.

(Testimony of A. O. Johnson.)

Q. I will ask you whether or not they told you when you bought your ticket that they were going to take the outside passage?

(Objected to as irrelevant and immaterial.)

A. That is what I understood, the outside passage, for she was marked up, I think, for the outside passage, and when we left we were under the impression that it was the outside passage until the leak sprung, and then he changed to the inside passage.

Q. How long were you out then when that happened?

(Objected to as irrelevant, immaterial and incompetent.)

A. I think it was the second day. We started in the afternoon sometime, and I think it was the next day that the leak sprung.

Q. Describe the condition of the water-closet.

A. Well, there is where I got the worst of it, too. Most of the time I could not get in there for the smell of it; that was fierce, it was bad; it was all broke down, and in the first place the seats were broke and you could not sit on it, and there was vomit all over the place, and the dirt was all over the top of it everywhere, and the floor and the sides and all of it.

Q. Did you see any effort made to clean it?

A. No, sir; I did not, until we got here, in the last day.

Q. Did the Chinamen and Japs all use the same closet?

(Objected to as irrelevant, immaterial and incompetent.)

(Testimony of A. O. Johnson.)

A. Every one the same one.

Q. Did the Chinamen pass in through where you folks were?

(Same objection.)

A. They were right in there with us, but they were in what they call the hatch, the Chinamen and the Japs had the forward part of the bunks, and the rear end the fishermen had.

Q. Did the Chinamen all have berths?

(Objected to as irrelevant and immaterial.)

A. No, they had mattresses; some of them had berths; they made berths in that corner for them.

Q. How frequently did you complain about not having a berth?

A. Well, we were after the second steward all the time. Every time he came down there they were all after him about berths and he kept saying, "I can't do anything for you."

Q. Did they complain to the captain?

A. I think it was the second or third day that there was three or four went up to complain to the captain, but I was seasick and I didn't pay much attention to it after that.

Q. What was your sickness due to, if you know?

A. Well, it was the smell of the boat and the condition that it was downstairs and having nothing to eat.

Cross-examination.

Q. (Mr. CAMPBELL.) You say you found all the berths were taken when you went aboard the boat?

(Testimony of A. O. Johnson.)

A. Well, I could not find any to put my stuff on.

Q. They were all filled up either with men or with baggage?

A. Yes, they were all filled up either with men or with baggage.

Q. And how long before the boat left did you go aboard?

A. I think I must have gone there about between five and six.

Q. In the afternoon?

A. No, in the morning.

Q. Were you not advised by either the officers or the members of the crew of the vessel that there were not any steerage berths for Valdes passengers, and if you did not want to go and take your chances that you could go and get your money refunded?

A. No, sir.

Q. Didn't you hear that announcement made throughout the vessel by members of the crew?

A. No, sir.

Q. Were you about the vessel?

A. Yes, I was about there two hours in the morning, and then I went up town and got my breakfast before I thought the boat was going to pull out, and then I came back again and stayed on the boat.

Q. And you heard no announcement made of that kind at all? A. No, sir.

Q. You say that after you left port they covered up that hatch forward?

A. Well, I think that hatch was covered up right along before.

(Testimony of A. O. Johnson.)

Q. What was it they covered up to keep the sea out?

A. That was after we were out a day or so that they closed the door coming up from the boiler-room; it was about midships, and—it is a little forward of amidships, I think.

Q. Forward of the bunks, or aft?

A. Aft of the bunks—they had a chain on it, and I think it was open about eight inches or so to keep us in, because it was rough, and that was all the ventilation there was.

Q. There was ventilation down through the hatch?

A. The hatch was closed.

Q. Was not the hatch cover taken off during the daytime?

A. No, sir; there was no hatch covers taken off until we went to Port Townsend or below there somewhere.

Q. The hatch covers were not off at all?

A. No, sir.

Q. What was on there—wooden hatches?

A. Canvas over it and wooden under, I think.

Q. Battened down, evidently? A. Yes.

Q. So that nothing could get down through there?

A. No, sir.

Q. You say you felt pretty sick? A. Yes.

Q. You felt pretty sick from the time you left Valdes until you got to Juneau? A. Yes.

Q. And then when you got out of the rough water you felt better?

A. Well, I think I got three or four meals off the boat at Juneau.

(Testimony of A. O. Johnson.)

Q. And from there on it was somewhat better?

A. Yes, the sea was smoother and I stayed on deck then day and night. I think I was down only to the table.

Q. You were down in the steerage quarters practically only when you were down to sleep and when you were down there at meals.

A. Yes, but during the rough weather we had to stay there.

Q. During the rough weather did you stay down below? A. Yes.

Q. Did you ever go up in the smoking-room at all?

A. I was up there once after we left Juneau; and they raised such a fuss in there about the gambling that we stayed out—that is, most of the steerage passengers were not supposed to be there.

Q. But you were permitted to be there?

A. I was there until they gave the order that everyone had to clean out.

Q. That was when they were stopping the gambling? A. Yes.

Q. The officers of the vessel were having difficulty in keeping the men from gambling.

A. That is what I heard and we were ordered out.

Q. They had to take to that means of stopping the gambling.

Mr. MARTIN.—I object to this as irrelevant, immaterial and incompetent.

A. I don't know whether it was that, but when I was in there they came in and said, "Everybody get out," and I did not go back there.

(Testimony of A. O. Johnson.)

Q. And the greater part of the time you spent on the deck of the vessel, except when the weather was rough and then you had to be down below?

A. Well, I could not be there at night and I went below at night.

Q. I mean when you were not sleeping?

A. Yes, except the first three days.

Q. And then you were confined down below because of the rough weather?

A. Yes, we had to stay there.

Q. That was because of the rough weather?

A. Well, they closed us in.

Q. That was because of the rough weather they closed you in?

A. It might have been.

Q. Wasn't it?

A. I could not say, they closed us in.

Q. Well, wasn't that why it was?

A. It might have been the rough weather and it might have been the condition the boat was in that they wanted to keep us out of the way.

Q. You do not know anything about what care was taken in cleaning out the steerage quarters while you were on deck, do you?

A. Well, I don't think I could be more than half an hour or an hour at the time on deck, because it would get too cold and you had to go down.

Q. That does not answer my question.

Mr. MARTIN.—We submit that he has answered the question completely.

(Testimony of A. O. Johnson.)

Q. (Mr. CAMPBELL.) You cannot say what was done towards cleaning out the steerage quarters while you were on deck?

A. Well, I could see when I would come down again that there was nothing done.

Q. I say you cannot say what was done toward cleaning out the steerage quarters while you were on deck?

A. It was in the same condition when I came back as it was in when I left.

Q. So that you are positive there was nothing done at all until just a day before you got into Seattle.

A. The day before we got into Seattle they gave it a general cleaning.

Q. And all this time these passengers sleeping in their bunks were vomiting on the floor.

A. All these fellows in the bunks were vomiting on the floor.

Q. And that vomit was left there?

A. It was tramped there and carried all over the boat.

Q. Was left there during all the voyage?

A. Well, between the bunks it was.

Q. No effort was made to clean it out?

A. The only place I saw them sweep was right from the door as you go in.

Q. You saw them sweep some?

A. That was where he had his bread cupboards.

Q. I say you saw them sweep some.

(Testimony of A. O. Johnson.)

A. Where he had the bread, but not between the aisles or between the bunks.

Q. Between the aisles and under the bunks?

A. Between the aisles or under the bunks, no.

Q. You didn't see him sweep?

A. I didn't.

Q. All you can testify to is your knowledge?

A. Yes, that's all.

Q. There was a wild scramble on the part of everybody for a place at the table first.

A. Yes.

Q. A kind of a general free for all.

A. They could not get there, only the fellows that occupied the bunks had their legs out and as soon as he would tap the bell all they had to do was to drop and that occupied it.

Q. And those passengers who were in the bunks stayed in there the greater part of the time.

A. They stayed there all the way, everybody on the boat remarked about it—that it was strange that they didn't even get out once, but they had lots of booze in there and they just stayed there.

Q. Where did you go to talk with the chef about the shortage of provisions?

A. Right there.

Q. Did you go back into the cabin?

A. In the bow of the boat.

Q. That was where you talked to the chef?

A. That was not our chef—our chef was right near the stairway.

(Testimony of A. O. Johnson.)

Q. You were talking about the second steward or one of the flunkies?

A. The other chef that came there and seen about our berth.

Q. What do you mean by the chef?

A. Well, he had a cap on, I don't know whether it was the second officer or not, but he came in there once in a while and we all jumped on him about it.

Q. With a blue cap?

A. He had a blue cap.

Q. He was not dressed with a white apron?

A. No, sir, he wasn't dressed with a white apron.

Q. Well, you don't know whether he was a chef or not. A. I don't know his name.

Q. I say you don't know whether he was a chef or not?

A. I don't know whether he was a chef or not.

Q. You don't know what position he had on board the vessel?

A. No, sir, but everybody jumped him and I jumped him.

Q. You don't know what position he had on the vessel?

A. No, I don't know what position he had on the vessel; I don't know that I would know the man if I would see him—but he done the ordering around in there.

Q. You didn't have any blankets on, did you?

A. No, sir, I had an overcoat.

Q. You didn't take any blankets with you?

A. No, sir, I didn't take any blankets with me.

(Testimony of A. O. Johnson.)

Redirect Examination.

Q. (Mr. MARTIN.) Did the other help obey this chef which you saw there?

A. He told them he would kick them around, and he would give what he called the flunkey chef his orders.

Q. Now, describe the hatch that you spoke about, and the covering that they had on it.

A. Canvas.

Q. That was over the hatch?

A. Over the hatch.

Q. Then there is a wooden frame under that?

A. Under that, because I walked over it many a time and I know there was wood under it.

Q. Was that wooden hatch that was under the canvas open—that is, I mean, was it made in little squares, that is made up?

A. It was made up in planks laid across. I should judge it would be about two-inch planks.

Q. How close was that?

A. Well, they were fitted pretty snug between the planks.

Q. About how many passengers did you notice around there on the vessel who were not provided with any berths?

(Objected to as irrelevant and immaterial.)

A. Well, I think there must have been 40 or 50.

Q. Down in your department? A. Yes.

(Motion to strike out as being a conclusion.)

Q. Do you know anything about the crowding down in the first-class department?

(Testimony of A. O. Johnson.)

(Objected to as irrelevant, immaterial, incompetent and as leading.)

A. Well, they had nine sleeping in the saloon, as he called it.

Q. That is the social hall?

A. Yes; this man I was speaking of with the cap he came down and I asked him where I could get a berth, and he said I can't do anything for you; he said they had nine first-class passengers sleeping upstairs in the saloon.

Q. Who told you that?

A. This fellow that came down there with the cap on. He said that they had nine first-class passengers sleeping upstairs in the saloon and he couldn't do anything with me.

Q. Who was he?

A. He had a cap on; I don't know.

Q. What kind of a cap?

A. A blue cap, like the officers have on the boat with a uniform.

Q. Was he one of the officers?

A. I don't know what position he held; he must have been one of the officers; he said he had nine first-class passengers sleeping upstairs.

(Testimony of witness closed.)

Adjourned until to-morning at 10:00 o'clock.

[**Testimony of Patrick Redmond, for Claimants.**]

March 26, 1908.

PATRICK REDMOND, one of the claimants, produced as a witness in behalf of claimants, being first duly cautioned and sworn, testifies as follows:

Q. (Mr. MARTIN.) What is your name?

A. Patrick Redmond.

Q. Were you one of the passengers on the steamship "Santa Clara" leaving Alaskan ports on the 6th day of October, and getting into Seattle on or about the 20th day of October, 1906?

A. Yes, sir, I was one of them.

Q. Where did you go aboard the vessel?

A. In Seward.

Q. Did you have a ticket? A. Yes, sir.

Q. What did you pay for it? A. \$25.

Q. What did you do with the ticket?

A. I gave it to the purser.

Q. I will ask you to look at the ticket number 824, being exhibit "D," and I will ask you to state whether that is your signature (showing).

A. Yes, sir, that is my writing.

Q. What ports did you touch at after you left Seward?

A. The first place was Valdes, and I think we called into Fort Liscum and took on a company of soldiers—I think there was a company altogether. The 3d F, I think it was—there is some of them in Fort Lawton now, I guess.

Q. Did you get a berth?

(Testimony of Patrick Redmond.)

A. No, sir, I had no berth.

Q. And you got on at Seward?

A. Yes, I got on at Seward.

Q. What effort did you make to get a berth when you got aboard?

A. I could not get nothing; I looked all over there where they were, and they were all filled in.

Q. What did you say to any of the officers on the vessel?

A. I didn't get a chance to say anything to any of them until we left Valdes.

Q. You tried to get a berth before you got to Valdes, did you?

(Objected to as leading.)

A. Yes, I slept on a hatch the first night and I had to sleep there right along, I had to spread my blankets there.

Q. How many passengers did you notice getting on at Valdes?

(Objected to as irrelevant and immaterial.)

A. Well, I could not exactly say for that, because I didn't take much notice, and I could not tell as to how many got on.

Q. How many did you see sleeping around on the floor before you got to Valdes?

(Objected to as irrelevant, immaterial and incompetent.)

A. Well, there must have been nearly 30 or 40 to my knowledge; they were not sleeping all on the floor together; they were sleeping on the hatches

(Testimony of Patrick Redmond.)

and sleeping on the tables that we had to eat off of; anywhere where they could spread their blankets.

Q. Those tables which you had to eat off of, how wide were they?

A. I guess they were about 15 or eighteen inches wide. I don't think they were that much.

Q. Board?

A. Yes, sir; they came out to the side of the ship like that (showing). I guess they would be about 14 inches wide.

Q. Fastened up to the side of the ship?

A. Yes, sir.

Q. Did you have any difficulty in holding on?

A. Quite a lot, sometimes; if you didn't watch the dishes you would have them all over you and the contents of them, too, if she was rolling.

Q. Where did you sleep all through that voyage?

A. I slept on the hatch the whole time I was down there, and sometimes I could not get there until very late at night.

Q. Why?

A. Because there would be a lot of Chinamen and Japanese there belonging to the company they had all bunks, and those men that were working for the canneries for the same company; they had bunks before we got aboard, and then there was a lot of Polacks or Polanders, they all had bunks; they were fishing for the company, and they had come down at the company's expense, and they all had berths.

Q. (Mr. CAMPBELL.) You do not know that do you?

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(Testimony of Patrick Redmond.)

A. Well, they were supposed to be that, anyway, by their own talk, and they all had bunks just the same.

Q. (Mr. MARTIN.) Describe the condition down there as to cleanliness.

A. Well, it would be pretty hard to do that it would be pretty hard to describe the cleanliness of it.

Q. Well, describe the unclean condition.

A. You might see them running a broom over it once or twice on the voyage while I noticed them underneath the tables; that was all.

Q. What, if anything, did you notice on the floor?

A. I noticed lots of grease.

Q. What, if anything, else?

A. Dirt and everything else you could mention was around there.

Q. Did you notice any spew up there?

(Objected to as leading.)

A. Quite a lot of it there, and some men were so sick they could hardly get anywhere else; they had only one companionway to go up on the spare deck and those aisleways were so crowded between the bunks you could hardly pass them; you couldn't get up through the hatch.

Q. And they had only one companionway?

A. One companionway, and that was next to the engine-room and one forward for the sailors.

Q. Did you notice the fishermen drinking?

A. Well, there was quite a lot of them drunk all the time when they could get it.

Q. They were drinking all the time?

(Testimony of Patrick Redmond.)

A. Yes, and they were the only people that I took any notice of that were making noise there. I don't know whether they were Finlanders or Polacks.

Q. How was the air down there?

A. Sometimes it was cool enough and other times it was just suffocating; there was no way to get the air in there only through this forward hatch, unless the portholes was open and sometimes you could not get those open unless you got wet all over with the sprays coming in.

Q. How was the food?

A. The food was pretty strong; it was so strong sometimes you could not eat it until you got so that when you had to eat something.

Q. Describe it.

A. Well, sometimes they had what they called a stew or a mulligan, or whatever it was; the stench of it you couldn't eat it, anyway.

Q. Did it smell? A. Yes, it smelt.

Q. Strong?

A. Yes, it would make you sick to smell it, and the bread was sour; there was a sample of the bread brought ashore.

Q. Well, that was put in in the other case as an exhibit, I believe.

A. I guess it was, but you couldn't use it.

Q. Did you suffer any on that trip from loss of sleep?

(Objected to as leading.)

A. I did suffer quite a lot.

(Testimony of Patrick Redmond.)

Q. Describe it as well as you can to the commissioner.

A. On account of not being able to sleep on the hatches because these Chinamen were gambling all the time and the hatch would be full of them, both the Chinamen and the Japs would be gambling all the time and the hatch was full of them and it was all right there on the one hatch.

Q. That was the place where you had to sleep?

A. Well, there was four or five of us had to sleep there.

Q. Did you have to wait until they got through gambling?

A. You would have to wait or else get into a row.

Q. How long would they gamble?

A. Sometimes till two or three o'clock in the morning.

Q. And you would have to sit up?

A. Sit up or walk around; they occupied pretty near the whole of it. Of course a man could sleep all the next day, for that matter.

Q. How frequently would they gamble there until two or three o'clock in the morning?

A. They kept it up right along, almost until they got into port here, except at the time we were in the other ports coming down.

Q. Now, I don't believe you described your suffering from loss of sleep and hunger. Now, go ahead and describe it as far as you can.

A. Well, I can't describe it any better than that. I had to sleep on the hatch and you know what a man

(Testimony of Patrick Redmond.)

has to suffer; you have to use your own blankets and have everyone jumping over them and tearing them and throwing them around.

Q. Were you able to sleep much?

A. You couldn't sleep much. In the daytime there was always some one around there, and in the night-time you were as bad as ever with the Japs and Chinamen.

Q. What was the condition of the air down there?

A. The air was all right under the hatch, but inside away from the hatch it was no good at all—it was almost suffocating; they must have had very near 300 men down there—they were all packed the same as you would pack in sardines in a box.

Q. First you say there was a lot of soldiers down there?

A. The soldiers were off in an apartment by themselves.

Q. In the same deck?

(Objected to as irrelevant and immaterial.)

A. On the same deck, that was off the first-class passengers' dining-room.

Q. Then what next was there in there?

A. Well, that was all with the exception of the steerage passengers.

Q. What did they consist of?

(Objected to as irrelevant, immaterial and incompetent.)

Q. You say there were some fishermen there?

A. Yes.

Q. How many?

(Testimony of Patrick Redmond.)

A. I don't know how many. I never heard how many, but I know there was quite a number of them.

Q. How many Chinamen do you think were there?

(Same objection.)

A. I guess there must have been 25 or 30 of them, to my knowledge; there may have been more.

Q. How many Japs?

A. Well, there were not very many Japs.

(Objected to as irrelevant and immaterial, and there is no evidence in this case to show that she exceeded her number of passengers.)

Q. Those Japs and Chinamen and fishermen were in the same department you were in?

(Objected to as irrelevant, immaterial and incompetent.)

A. No, there was a partition between the Chinamen and the Japs and us.

Q. Now, describe that partition and what it consisted of.

A. Well, it consisted of boards; they had cattle in her going up where the Chinamen were and there was an opening on the top between the deck and the top of the partition.

Mr. CAMPBELL.—I move to strike this all out about the cattle going up as being irrelevant and immaterial.

A. That was all they had there was just a wooden partition up as far as the hatch.

Q. (Mr. MARTIN.) But from the hatch on it was all open and they could pass right around?

(Testimony of Patrick Redmond.)

A. Yes.

Q. From one end to the other? A. Yes.

Q. Did you notice anything about how many lifeboats the vessel carried?

(Objected to as irrelevant, immaterial and incompetent.)

A. I never noticed much about that. I think there was about six—three on the port and three on the starboard side.

Q. Were those lifeboats of sufficient capacity to handle the passengers, in case of a wreck?

(Same objection.)

A. I don't believe they were.

Q. Would they have handled a third of them?

(Objected to as irrelevant, immaterial and incompetent.)

A. No, not a third of them; I think there was over 400 on that boat coming down.

Q. Besides the crew?

A. Besides the crew.

Q. Now, what did you notice, if anything, about the boat being unseaworthy?

(Objected to as leading, and as irrelevant, immaterial and incompetent.)

A. I knowed that her boilers were leaking and her decks were leaking, too, but about the hull, I don't know if that was leaking; they kept that secret from us, but it looked very suspicious when she turned back and went into Glacier straits, into Juneau.

Q. She did turn back and go in Glacier straits?

(Testimony of Patrick Redmond.)

A. Yes, and went into Juneau; we were given to understand that she was running short of provisions.

Q. Who gave you to understand she was running short of provisions?

A. The crew and the officers; at least we heard so on deck.

(Counsel for petitioner moves to strike out the answer as hearsay.)

Q. You heard this from the officers?

(Objected to as leading.)

A. Yes, I heard them speaking about it.

Q. Did you see them take on any provisions at Juneau?

A. Yes, they took on some, but it didn't make any change in ours.

Q. You got the same stuff?

A. Just the same food.

Q. You do not know whether the first-class got better or not?

A. No, sir, I had nothing to do with them.

Q. Did you notice the vessel lying to at nights?

A. Yes, sir, she lay to pretty often at nights—all night, too. For quite a while her boilers was out of commission—the port side boiler was shut down altogether, the fires was drawn out; the tube boilers was leaking, I seen that with my own eyes. I was standing looking down, and the chief engineer was down there himself repairing them.

Q. Did you hear any of the officers make any remark about the hull leaking?

(Objected to as leading.)

(Testimony of Patrick Redmond.)

A. No, I didn't hear that.

Q. That was the same boat that was just put back in here from the straits with eight foot of water in her hold?

(Objected to as leading and irrelevant, immaterial, incompetent and that there being no such facts before the Court.)

A. That was the same vessel.

Q. Did you notice any lifebelts down there?

(Objected to as irrelevant and immaterial.)

A. Yes, sir, there was quite a few of them, but if there was any trouble it would be hard to get at them.

Q. You say it would be hard to get at them?

A. Yes.

Q. Now, describe about their setting the passengers to these tables.

A. Well, it was just about driving so many cattle into a stall to feed them, that was all; they were wrangling and pulling and everyone running to the table.

Q. I will ask you whether or not these fishermen would stick their feet out to prevent you folks from getting in there?

A. Yes, sir, they were always there first—they had generally their bunks in front of the tables, and you had to watch a chance to get at the table if you were hungry, and then when you did get at the table you got very little to eat—just enough to keep you going, that was all.

(Testimony of Patrick Redmond.)

Q. Who was it that you said you heard saying that they were running short of provisions?

A. I heard it mentioned by different men on the ship.

Q. Did you hear the chef or the steward?

A. Yes, that steerage steward was the first man I heard speak of it.

Q. What did he say?

A. He said they were running short of provisions that was the reason the men were hollering for more food. He said they would have to go into Juneau to get it, that they didn't have it on the ship.

Q. Is this your signature on this exhibit "C," Mr. Redmond? A. Yes, sir, that is mine.

Q. Did you go up to my office and sign that paper? A. Yes, sir.

Q. Did you see the rest of those fellows sign it?

A. Yes, me and Mr. McCormick together.

Q. You saw those same fellows aboard the vessel, did you?

(Objected to as leading.)

A. Yes, they were all aboard the vessel coming down. McCormick and I got on at Valdes.

Q. What condition did he have, different from what you had, if any?

(Objected to as irrelevant, immaterial, incompetent and leading.)

A. He didn't have any at all; he used to sleep up in the smoking-room once in a while when he got a chance. I know that he had no bunk and no place to sleep.

(Testimony of Patrick Redmond.)

Q. Now, what, if any, accommodations did any of these passengers have different from what you had?

(Objected to as irrelevant, immaterial and incompetent.)

A. There was none of them—I knew quite a few of these fellows here—they didn't have any more than I had. I know Sullivan and Anderson and this Pierce and Matson and Kelly and myself and McCormick; I know all those fellows had no bunks.

Q. You are acquainted with them?

A. Yes, sir, I am acquainted with them—I worked with them.

Q. Did you know John Hannofen?

A. Yes, I knew him well; in fact, it was him that started to draw up this suit first coming down on the boat. It was him that took the sample of bread ashore.

Q. What conditions did he have different from what you had?

A. He didn't have none at all, either.

Cross-examination.

Q. (Mr. CAMPBELL.) Who is this man Hannofen?

A. Well, when I knew him he was up at Camp No. 49, on the Alaska Central; he was shift boss—we were working on the—

Q. On the Alaska Central?

A. I was there sixteen months on there.

Q. What character of work were you doing?

(Testimony of Patrick Redmond.)

A. Drilling.

Q. Were you working in the tunnels?

A. Yes, I worked in two tunnels.

Q. Did you travel up on the "Santa Clara" before?

A. I went up on her when I went to Seward.

Q. Did you go up steerage? A. Yes.

Q. You knew what her steerage quarters were?

A. Yes, but there was not so many on her?

A. You knew what part of the vessel they were and how they were arranged? A. Yes.

Q. (Mr. MARTIN.) How did the steerage coming down compare with what it was on the other trip?

A. Well, in the sleeping part of it, that was all right, but the food was pretty much the same; in fact, I don't believe they know how to feed a man on those boats.

Q. (Mr. CAMPBELL.) You say the food coming down was about the same as going up?

A. Worse, if any.

Q. That the food going up was better?

A. That the food coming down was blue; it was not good at all; it was rotten.

Q. But going up it was very much better?

A. Not very much better; very little.

Q. You say Hannofen got you to get up this list of claims?

A. No, sir, he didn't do anything of the kind.

Q. Well, you say Hannofen got it up?

A. We all got it up between ourselves, quite a bunch of us.

(Testimony of Patrick Redmond.)

Q. And you all went up to Mr. Martin's office when you came down? A. Yes.

Q. Hannofen took you up there?

A. No, sir; me and McCormick came up there together. Hannofen didn't go up with us at all.

Q. You don't mean to tell me there were thirty or forty passengers out of Seward sleeping on the floors?

A. Well, they may not have been all out of Seward.

Q. You testified they were out of Seward.

A. There was quite a lot of them got on at Valdes. I know that McCormick got on at Valdes.

Q. You never counted to see how many were sleeping there on the floor?

A. I didn't want to count them.

Q. I say you didn't count them.

A. No, I didn't count them.

Q. This was simply a presumption at this time on your part.

A. Well, I just know there was quite a number. I couldn't pick them all out and count them out. I know there was just room enough for them to lie around there—you would fall over them if you got up over the hatch.

Q. You say that when the condition of the weather was such that they could open the ports or take the hatch off that the air was cold there.

A. Sometimes my blankets was that wet that I would have to hang them up to dry them.

Q. That was the spray over the hatch.

(Testimony of Patrick Redmond.)

A. The spray.

Q. You left your blankets underneath the hatch?

A. I had no place to put them—I could not put them into another man's bed.

Q. Could you not take them back by the boilers?

A. Yes, if you want to fight with some of the firemen.

Q. You did not see anybody sleeping back there?

A. Yes, I often went in and sat down there myself and fell asleep there.

Q. And the sea was such after you left Valdez until you got to Juneau and they could not keep those ports open?

A. They went into Orca and took on coal.

Q. I am speaking about the ports which would let the air into the steerage quarters.

A. Not very well; she could not.

Q. There was so much sea there that you could not open them up very well.

A. No, and even so you could not get very much air there, because the bunks were all lined up alongside the boat and were almost close up to these lights and those men would not open them because they were afraid of getting their beds wet.

Q. You testified on your examination in chief that when these ports were opened up you could get fresh air in there.

A. Very little of the time—very seldom they were open because the men that were sleeping there would not let you open them because if they did they would have to take their beds out.

(Testimony of Patrick Redmond.)

Q. These men sleeping there would not let them be opened up?

A. No, and it was all these Polacks that had these bunks, that was where these ports were.

Q. You do not know anything about what nationality those men were.

A. Well, I think they were Polacks.

Q. What nationality are you?

A. I am an Irishman.

Q. You do not know and you have no personal knowledge of whom these fishermen worked for?

A. Only by their own talk; they told me themselves that they were fishing for the company; they had been fishing all the summer for the company, they told me.

Q. How long before the vessel left Seward, did you get aboard?

A. About an hour or half an hour.

Q. Had you been drinking?

A. No, sir, I didn't drink because I had no money to drink—the money that I paid for that ticket I had to give a check for.

Q. Hadn't you been working up there for the Alaska Central?

A. Yes, and I had checks, but I had no currency; it was a check that I bought that ticket with.

Q. And they wouldn't cash your checks in Seward?

A. Yes, but it was too late; the train didn't get down there until after six o'clock in the evening, and she left early the next morning and the bank was

(Testimony of Patrick Redmond.)

closed. Of course I could have got them cashed if I went into a saloon for it.

Q. What?

A. I say I might have got them cashed if I went into a saloon for it.

Q. But you would not go into the saloon?

A. No, not then I would not.

Q. You cannot tell me who those officers were that you say told you about the shortage in provisions?

A. Well, I heard the chief himself make the remark about it.

Q. Who?

A. The chief officer, I don't know his name.

Q. How do you know he was the chief officer?

A. Well, I can pretty near tell the chief officer.

Q. How? A. By the stripes on his arm.

Q. How many stripes does a chief officer have?

A. Well, they have got more here than they have on the Atlantic.

Q. How many stripes do they have here?

A. I think they have three stripes.

Q. And that was what indicated to you that it was the chief officer.

A. Well, he was called to be the chief on that boat—everybody else called him chief.

Q. Everybody called him chief? A. Yes.

Q. And he was the one that told you there was a shortage in provisions?

A. Well, he didn't report it altogether, but I heard him mention it—of course there was nothing reported.

(Testimony of Patrick Redmond.)

Q. What you mean is that you heard the other passengers say that?

A. I heard the chief himself say it—they called him chief.

Q. Was he talking to you?

A. No, he was not talking to me at all—he was talking to some of the saloon passengers.

Q. Where was this?

A. Right on the spar deck.

Q. You were on deck most of the time?

A. I was on the deck all the time that I could get there when it was not too rough.

Q. That was practically all the time, except when you were sleeping and eating?

A. Yes, except when I had to go to sleep—there was no other place to go.

Q. Were you not in the smoking-room at all?

A. The smoking-room was crowded all the time and I could not get in there at all, unless you would get up early in the morning and stay there all day.

Q. The steerage passengers were permitted to go there?

A. In the smoking-room they were, yes, that was the only place they could go.

Q. You were permitted to go all over the ship?

A. Well, you might be permitted to go all over the ship, but I don't think you would go on the quarter deck—I don't think they would let you go there.

Q. Do you mean on the bridge?

A. Yes.

(Testimony of Patrick Redmond.)

Q. Well, you never go there on any vessel, do you, on the bridge?

A. Well, it all depends; there is generally a notice put up to that effect, but there was none on that boat.

Q. Except for the bridge, you could wander all about the boat wherever you wanted to?

A. You could walk around.

Q. That is not the permission that is usually given to steerage passengers.

A. I don't know whether it is given or not, but we took it.

Q. That is not the usual permission given steerage passengers, is it—steerage passengers are usually confined to the forward part of the vessel?

A. Not on all ships they are not.

Q. In practically all vessels?

A. Not all vessels.

Q. How many times have you been up to Valdez and Seward?

A. I only made the one trip to Seward and then I went up again on the same boat last spring up to Catella, that same Santa Clara.

Q. (Mr. MARTIN.) They also gave you the privilege of looking out at the water?

A. They give you the privilege of looking out on the water—I guess we took that ourselves. If we had stayed down there in the steerage quarters we would have been taken ashore on shutters and carried out on sticks or something.

(Testimony of William Lunberg.)

Q. You think you would?

A. Yes, we would have been taken up on an ambulance I suppose—they would have had ambulances waiting on us. It was a wonder they didn't as it was.

(Testimony of witness closed.)

[**Testimony of William Lunberg, for Claimants.**]

WILLIAM LUNBERG, one of the claimants, produced as a witness in behalf of claimants, being first duly cautioned and sworn, testifies as follows:

Q. (Mr. MARTIN.) State your name.

A. William Lunberg.

Q. Were you a passenger on the steamship "Santa Clara" leaving Valdez and Seward and the other ports up there about the 6th of October, 1906, and reaching Seattle about the 20th of October, 1906?

A. Yes, sir.

Q. What did you pay for your ticket?

A. \$25.

Q. Is this your ticket here marked 825?

A. Yes.

Mr. MARTIN.—I notice that these tickets run from—well, one is numbered 145 and then there are several running 150 and there are some 804 and 808 and then there are some 2498. Now, I would like to have some member of the company explain why they jump their tickets in that way—why they don't have the tickets run consecutively, so that one could see by getting the lowest and the highest number what tickets they had.

Q. (Mr. MARTIN.) What did you do with your ticket?

A. I gave it to the purser.

(Testimony of William Lunberg.)

Q. Where did you get aboard the vessel?

A. At Seward.

Q. Did you have a berth? A. No, sir.

Q. Where did you sleep?

A. Any place I could get a chance to.

Q. Well, tell us some place that you got a chance to sleep.

A. I slept on the carpenter bench most of the time.

Q. Where was that?

A. It was outside where the steerage passengers sleep; they had a kind of a bench there.

Q. What did you do when you went aboard the vessel first? A. Well, I asked for a berth.

Q. Who did you ask?

A. I don't remember who it was. I guess it was some of the officers; I don't remember.

Q. Was it any of the officers of the vessel?

(Objected to as leading.)

A. Yes, sir.

Q. What did he tell you?

A. Well, he said if I would wait until they got straightened around that there would be plenty of berths, he said, and we waited and we didn't get none.

Q. Where did you sleep the first night?

A. I piled down any place the first night I slept in town—because after they pulled out that night they pulled back again and pulled out again next morning.

Q. Were you on there when they first pulled out?

(Testimony of William Lunberg.)

A. Yes, sir.

Q. And then they went back again.

A. Yes, sir.

Q. Do you know why they did that?

(Objected to as irrelevant and immaterial.)

A. I don't know—stormy weather, they claimed.

Q. You don't know whether the ship was making water or not?

A. No, sir; not at that time I don't.

Q. You didn't think it was at that time?

A. I don't know whether she was or not—it was stormy weather I heard.

Q. Now, did you sleep on this voyage all the way down?

A. No, not all the way; I was in the social hall one night.

Q. Then where did you sleep the rest of the time?

A. I slept wherever I could find a place.

Q. Were there many other people on the boat situated similar to you?

(Objected to as irrelevant and immaterial.)

A. Yes, sir, they were sleeping all over there.

Q. Many of them without bunks?

(Objected to as leading and irrelevant and immaterial.)

A. Quite a number of them.

Q. How many did you notice sleeping without berths?

A. There must be about thirty or forty.

Q. Lying around on the deck?

(Objected to as leading.)

(Testimony of William Lunberg.)

A. Yes, sir, all over.

Q. Did you suffer much from not having a place to sleep? A. Yes, I guess we did all right.

Mr. CAMPBELL.—We ask the record to show at this time the objection of counsel for petitioner to all these questions and this manner of leading the witness all through the testimony.

Mr. MARTIN.—I am willing that the objection may be considered in to every question that is asked.

Q. Now, go on and tell what, if any, suffering you endured on that trip from not having a berth.

(Objected to as leading.)

A. Well, about the same as anyone else would be; a fellow would be sleepy and tired and it was too cold to lie on the floor, and one thing and another.

Q. How was the condition of the vessel as to cleanliness—how did they keep her?

A. Well, they kept her about as dirty as they could—about as like a hog-pen as they could; that is as close as you can come to it. There was puke on the floor and they never cleaned her up.

Q. They didn't clean her out?

A. They cleaned her out a little before we got into Seattle; that is the only time I noticed her cleaning her.

Q. If they had cleaned it you would have noticed it before?

(Objected to as leading.)

A. I would.

Q. How was the air down there in the steerage?

A. It was filthy, foul.

(Testimony of William Lunberg.)

Q. How was the water-closet?

A. It was in bad condition; it was broken down.

Q. How was it as to filth and dirt in there?

A. Well, it was water in there half the time.

Q. Running over?

A. Yes, it ran over too, sometimes.

Q. Any of the dirt come back out on the floor?

A. Yes.

Q. And excretions lying on the floor?

(Objected to as leading.)

A. Well, some of came out all right.

Q. You understand what I mean by excretions?

A. Yes, I understand that.

Q. Did the Chinamen use the same closet?

(Objected to as irrelevant and immaterial.)

A. Yes, sir.

Q. And the Japs?

(Same objection.)

A. Yes.

Q. And the fishermen?

(Same objection.)

A. Yes, all used the same.

Q. The Chinamen and the Japs and the fishermen and the Hungarians all had berths, didn't they?

(Objected to as leading, irrelevant, immaterial and incompetent.)

A. Yes, sir.

Q. How was the food?

A. Well, that was pretty bad.

Q. Well, now, describe it, tell what it was.

A. Mulligan was about the only thing we did have.

(Testimony of William Lunberg.)

Q. How was that?

A. It was not very good to eat.

Q. What was wrong with it? A. Rotten.

Q. Did you suffer any from hunger?

A. Yes, I didn't get half enough to eat either of what was there.

Q. Did you suffer any ill-effects from eating what they did have?

(Objected to as leading.)

A. Yes, sir, I got sick all right.

Q. Now, what do you know about the vessel being unseaworthy, if anything?

(Objected to as leading.)

A. Why, they say she was leaking and they had the pumps working, that is all I know about it.

Q. Who did you hear say it was leaking?

(Objected to as leading.)

A. I heard the passengers talking about it.

Q. Did you hear the engineer or any of the officers say it?

(Objected to as leading.)

A. No, I did not.

Q. What, if anything, was said about the provisions being short, if anything?

(Same objection.)

A. I didn't hear the officers say it.

Q. How was the air in the steerage?

A. It was foul.

Cross-examination.

Q. (Mr. CAMPBELL.) You didn't see the vessel leaking yourself, did you? A. No, sir.

(Testimony of William Lunberg.)

Q. You didn't see her pumps working, did you?

A. No, sir, but I heard them working.

Q. How did you know what pumps they were that were working?

A. Well, I heard them say so.

Q. You heard who say so?

A. The fellows on the boat.

Q. Some of the passengers around?

A. Yes, sir.

Q. You say you slept in the social hall?

A. One night.

Q. What night was that?

A. I don't remember what night it was.

Q. Was it right after leaving Seward?

A. No, it was close here.

Q. You knew of other steerage passengers that had no berths, that were sleeping in the social hall?

A. No, sir, I did not.

Q. How did you happen to sleep in the social hall?

A. A fellow had to go anywhere he could.

Q. And didn't you go to the steward and he told you you could sleep there? A. No, sir.

Q. Didn't the purser tell you that you could sleep there? A. No, sir.

Q. Did you know of any other steerage passenger that was sleeping in there?

A. No, sir, I did not.

Q. Did John Hannofen get you to sign this complaint too? A. I don't know who it was.

Q. Somebody came around who got you to go up and sign this?

(Testimony of William Lunberg.)

A. There was one fellow; I don't know who it was.

Q. He came there and got you to come up to Mr. Martin's office and sign it? A. No.

Q. Well, what did he get you to do?

A. I don't remember where I did sign that.

Mr. MARTIN.—He has not seen this paper—you should submit it to the witness.

Mr. CAMPBELL.—All right; let him see it (handing document to witness).

Q. Some one of the passengers came to you and suggested that you would get together and bring a lawsuit, was that it? A. No.

Q. What did he say to you?

A. We talked it over on the boat coming down.

Q. With this man that was getting this crowd together? A. I don't remember who it was.

Q. Well, it was the same man that was leading it? A. Yes, sir.

Q. The same man that was working it up?

A. Yes.

Q. You were on deck most of the time?

A. Yes.

Q. There was a pretty big sea on from Seward and Valdes until you got on the inside passage?

A. Not much.

Q. Well, the seas were coming up on the top of her?

A. Yes, sir; they came over once in a while a little.

Q. They would come over so that they had to keep the hatches battened down?

A. Yes, they had to keep them closed.

(Testimony of William Lunberg.)

Q. She was rolling pretty heavily, wasn't she?

A. Yes, sometimes.

Q. A great many of the passengers down in the steerage were seasick?

A. Yes, a few of them.

Q. (Mr. MARTIN.) Is this your signature on this exhibit "C"?

A. Yes.

Q. You signed that?

A. Yes.

Q. You saw those other gentlemen sign their signatures there?

A. I believe I did.

Q. Were those the same parties that were passengers on the vessel?

A. Yes.

Q. Was their accommodation the same as yours?

A. The same thing.

Q. Counsel spoke to you about working up a suit. Did anybody work up any suit?

A. No, sir, we talked about that we ought to do something.

Q. What did they say they ought to do?

A. Well, we ought to get better than what we did have, because they didn't treat us right.

Q. A general complaint, wasn't it?

A. Yes.

Q. That complaint was made to the officers, wasn't it?

A. Yes.

Q. Frequently?

A. Well, every day they complained to the officers.

Q. (Mr. CAMPBELL.) Is this man that got you all together, out in this crowd out here in the hall?

A. No, sir.

(Testimony of William Lunberg.)

Q. You didn't see him since you came to port, did you? A. No, sir.

Q. He was a stranger on the vessel?

A. The same as any other passenger.

Q. And he was the one that took you to Mr. Martin's office? A. We all went up there.

Q. Well, he was the ring-leader and he led you up there?

A. No, sir, he didn't lead us up there. What do you mean by a ring-leader? It was all the same thing.

Q. He was the one who sort of directed you and you followed him.

A. Well, he knew about it, and so we went up to him, the same as anybody else, if he knew a good lawyer in town we would go to him.

Mr. MARTIN.—We offer now in evidence six more tickets, numbers 157, 2486, 2499, 2497, 2487, 2498.

Mr. CAMPBELL.—We have no objection to these tickets whose signatures are identified by the complainants in this case, going in evidence. Any tickets other than those which are identified by the claimants in this case, we shall object to them.

(Tickets marked "Claimants' Exhibit F.")

Mr. MARTIN.—And we demand the rest of the tickets of these claimants here to be produced.

Mr. CAMPBELL.—I will state for the benefit of the Court, that these are the only tickets we have in our possession which were handed in by the parties

(Testimony of William Lunberg.)

giving their names, giving the names as handed to us by Mr. Martin as claimants in this case.

Mr. MARTIN.—We also demand the passenger list and the copy of the certificate of inspection.

Mr. CAMPBELL.—We submit that that is a matter of public record which is as easily accessible to counsel as to the company.

Mr. MARTIN.—And we also demand the measurement of the steerage department showing the cubic feet of air between decks.

Mr. CAMPBELL.—We submit that that is a matter of public record and is as accessible to the counsel as to us, and we shall refuse to comply with the order unless certified to the Court and the Court compels us to comply with it.

Mr. MARTIN.—And also a list of the number of lifeboats and the capacity of each lifeboat on the vessel.

Mr. CAMPBELL.—We take the same position in regard to that.

Mr. MARTIN.—And if there are any plans of the vessel showing the capacity of that steerage department we want them.

(Whereupon further proceedings are adjourned subject to be taken up by agreement between the parties.)

In the United States District Court, Western District of Washington, Northern Division.

No. 3658.

In the Matter of the Petition of the NORTHWESTERN STEAMSHIP COMPANY, LIMITED (a Corporation), Owner of the American Steamer "SANTA CLARA," for a Limitation of Liability.

To the Honorable C. H. HANFORD, Judge of the Above-entitled Court.

Pursuant to the order of reference heretofore made in the above-entitled proceeding, on this 25th day of March, 1908, the parties to said proceeding appeared before me by their respective proctors, Ira A. Campbell, Esq., appearing on behalf of the petitioner, and Wm. Martin, Esq., appearing on behalf of the contestant, and thereupon the following proceedings were had and testimony offered pursuant to said order of reference, to wit:

[Testimony on Behalf of the Petitioner.]

Sept. 18th, 1908, 3 o'clock P. M.

Continued pursuant to adjournment.

Appearances:

IRA A. CAMPBELL, for Petitioner.

J. L. BALDWIN, for Claimants.

[Testimony of F. J. Stephens, for Petitioner.]

F. J. STEPHENS, called as a witness on behalf of the petitioner, being first duly sworn, testified as follows:

Q. (Mr. CAMPBELL.) Your name is F. J. Stephens?
A. Yes, sir.

(Testimony of F. J. Stephens.)

Q. Were you purser on board the steamer "Santa Clara" on the voyage leaving Seward on or about the 6th day of October, 1906, bound for Seattle?

A. Yes, sir.

Q. Do you know the number of passengers which the steamer "Santa Clara" was allowed to carry by law at that time?

A. Yes, sir.

Q. State them.

Mr. BALDWIN.—I object to this; I think the records show that.

A. 360.

Q. Do you know how many passengers she had on board that trip?

A. Yes, sir; 353.

Q. How many steerage passengers was she allowed to carry?

A. 237.

Mr. BALDWIN.—I object to that for the same reason.

Q. How many?

A. 237.

Q. How many steerage passengers did she have aboard?

A. 230.

Q. What time of the day did you leave Seward?

A. The first time out in the afternoon about four or five o'clock in the afternoon.

Q. How far did you proceed?

A. We went out about twenty or thirty miles and returned to port on account of rough weather.

Q. What was the condition of the weather you encountered out there?

A. Very stormy.

Q. What time did you then leave Seward?

A. Four o'clock the following morning, or about.

(Testimony of F. J. Stephens.)

Q. Do you know whether or not there was sufficient berths for all the steerage passengers taking passage on the steamer "Santa Clara" at the time she left Seward? A. Yes, sir.

Q. Were any complaints made to you by passengers getting—steerage passengers getting on at Seward that they had no berths? A. Yes, sir.

Q. Was anything done about it?

A. Yes, sir.

Q. State fully what was done.

A. I had the chief steward and the steerage steward go down there and ascertain the conditions, and found that some of the other passengers were using the bunks for their baggage; of course then took out the baggage and gave up the berths to the passengers desiring them.

Q. After this was done was any complaint made—

A. No more complaints.

Q. —to you that there were insufficient berths?

A. No, sir.

Q. What time did you reach Valdes?

A. In the early evening of the 6th.

Q. Before that—in what condition were the steerage passengers who were on board the vessel at the time of leaving Seward?

A. A great number were much under the influence of liquor.

Q. Where did the vessel tie up after returning to port at Seward? A. Where did she tie up?

Q. Yes. A. To the dock—to the wharf.

(Testimony of F. J. Stephens.)

Q. Did the steerage passengers remain aboard that night?

A. They all went ashore—most of them—went uptown, I mean.

Q. Did you see them when they came back before the ship left?

A. Yes, I saw quite a number of them.

Q. What condition were they in?

A. Very much under the influence of liquor.

Q. Were you down in the steerage during the trip from Seward to Valdes? A. Yes, sir.

Q. In what condition were the passengers at that time?

A. Well, a great number of them were still under the influence of intoxication.

Q. What was the condition of the weather encountered between Seward and Valdes?

A. It was moderate weather on the second time leaving Seward.

Q. Were any of the passengers seasick between Seward and Valdes? A. Yes, sir, for a while.

Q. What was the effect of this seasickness upon them? A. Vomiting and unable to eat.

Q. Where were the seasick passengers staying?

A. Down forward in the steerage department.

Q. In their bunks? A. Yes, sir.

Q. And when they were seasick where would they vomit? A. Right in the alleyways.

Q. On the floor?

A. On the floor—made no attempt whatever to reach a vessel of any description.

(Testimony of F. J. Stephens.)

Q. Did you have any vacant berths in the steerage at the time you reached Valdes?

A. No, sir.

Q. What did you do upon reaching Valdes?

A. I ascertained from the agent at Valdes what number of steerage passengers he had for Seattle and found that I would not be able to accommodate them with bunks.

Q. By bunks you mean bunks in the steerage?

A. With bunks in steerage, and so advised our agent there; we then decided to advise all of them that purchased tickets.

Mr. BALDWIN.—I object to what he decided.

Q. State what you did.

A. Decided to notify them all—

Mr. BALDWIN.—I object to this and move it be stricken.

A. —to return to the office and have their money refunded, as we didn't have sufficient bunks to accommodate them in the steerage.

Q. Did you give the passengers at Valdes notice of that right?

A. Yes, sir; the quartermaster was stationed at the gangplank advising all that we had no berths for them.

Mr. BALDWIN.—I object to this; it is not shown that the witness knows.

A. (Continuing.) I personally went around among the passengers on board the ship together with the chief steward and the steerage steward advising all Valdes passengers who had embarked that we

(Testimony of F. J. Stephens.)

didn't have sufficient accommodations for them and to return to the company's office and they would be refunded the amount of their ticket.

Q. What did the passengers say to you in reply to that?

A. They said they didn't care anything about that; that they had to get to Seattle and would go anyway, regardless of a berth, that they had to reach Seattle; they could not afford to remain at Valdes for another boat.

Q. What reason did they give for not remaining in Valdes—for not desiring to remain in Valdes?

A. They were out of employment then and were all ready to embark for Seattle and didn't want to remain over for another boat—two weeks' delay; it was imperative that they go out—winter approaching also.

Q. State whether or not you heard the quartermaster stationed at the gangplank notify the passengers getting on from Valdes that there was no accommodation and they could secure a refund of their money?

A. I heard of it by several passengers.

Q. Was any general announcement made to that effect on the dock?

A. Not on the dock probably—aboard the ship there was.

Q. I will ask you whether or not any notice was posted on the outside of the steamship company's office in Valdes to that effect?

A. That I could not say.

(Testimony of F. J. Stephens.)

Q. What condition were the steerage passengers in at the time the ship left Valdes?

A. Well, some of them were still intoxicated—in fact, they brought liquor aboard with them at Seward sufficient to do for several days.

Q. Of what class of men were the passengers largely made up?

A. Laboring men—fishermen.

Q. What time did you get away from Valdes?

A. I think it was midnight—was the 6th at or near midnight.

Q. Were any complaints then made to you of the steerage passengers not having berths?

A. Not that night; no, sir.

Q. Was any complaint made to you thereafter?

A. Yes, next morning there was several complaints.

Q. What did you do at that time?

A. I arranged with the steward to permit them to sleep up in the social hall, the dining saloon and the smoking-room.

Q. Did any of them sleep in the social hall, dining saloon or smoking-room?

A. Yes, sir, quite a number availed themselves of that opportunity.

Q. Where on the vessels running to Southwestern Alaska, are the steerage passengers confined—what part of the ship?

A. The forward part.

Q. What do you mean by the forward part?

A. Up forward on the main deck.

(Testimony of F. J. Stephens.)

Q. Are they allowed to mingle in the accommodations given the first-class passengers?

A. No, sir.

Q. Were they on this voyage?

A. Yes, we made an exception and gave them the freedom of the ship—permitted them to use any part of the ship at all, including toilets for the first-class passengers.

Q. State whether or not they were permitted to use the washroom for the first-class passengers?

A. No, sir.

Q. Was any restriction placed upon the steerage passengers as to any part of the ship to which they might go?

A. None whatever.

Q. Whereabouts did they sleep in the dining room?

A. On the cushioned settees.

Q. What were these cushioned settees?

A. Plush velvet.

Q. Upholstered?

A. Yes, sir.

Q. How were they arranged about the room?

A. Right around on both sides of the vessel's—just on the two sides of the vessel—the port and starboard sides.

Q. What is the size of the dining saloon—what length is it?

A. I don't know.

Q. Give it as near as you can in your judgment.

A. It would be the width of these two rooms, I should judge.

Q. Thirty feet?

A. Well, yes, I guess so.

Q. On what did they sleep in the social hall?

(Testimony of F. J. Stephens.)

A. On the cushioned settees and some of them on the floors—carpeted floors.

Q. Was the dining saloon and the social hall heated on the voyage down? A. Yes, sir.

Q. By what means? A. Steam heat.

Q. Does the steamship company furnish the steerage passengers with blankets and bedding?

A. No, sir.

Q. How are the bunks in the steerage made up?

A. Canvas sacking bottoms.

Q. Is it customary to furnish them with mattresses in steerage? A. No, sir.

Q. What bedding do the steerage passengers use to cover themselves?

A. Their own blankets.

Q. Were the steerage passengers permitted to carry these blankets into the dining-room and social hall?

A. If they so desired; yes, sir.

Q. I will ask you whether or not general notice was given to the steerage passengers who paid and didn't have berths in steerage that the dining-room and social hall were open to them?

A. Yes, sir.

Q. Where did they sleep in the smoking-room?

A. On the settees there too—leather settees the full length of the ship; about thirty feet or so.

Q. These settees run around the room?

A. No, sir, athwart ships.

Q. Is it customary to allow steerage passengers on that run to have the freedom of the smoking-room? A. No, sir.

(Testimony of F. J. Stephens.)

Q. What kind of weather did you encounter after leaving Valdez?

A. Very stormy a for few days.

Q. For how long, or until you reached what point—where did you run out of the stormy weather?

A. About a day and a half out from Valdez.

Q. What passage did you take coming down—the outside passage or the inside passage?

A. Started for the outside but came inside by way of Juneau.

Q. State whether or not any of the steerage passengers were seasick during the time that you were out in the Pacific Ocean in this storm that you have mentioned?

A. Yes, sir; the majority of them were seasick, I should say.

Q. Where were they—where were the steerage passengers during that time?

A. Well, some of them were up forward and some of them, and at night of course some in the social hall.

Q. Did any of them remain in their bunks?

A. Yes, sir, there was quite a number remained in their bunks.

Q. How did those who remained in their bunks act?

A. Well, they were vomiting all over the floor of the ship, regardless of the vessels that were handy for receiving slops of that nature.

Q. Is the steerage equipped with vessels for receiving—

A. Yes, sir, buckets.

(Testimony of F. J. Stephens.)

Q. Were any complaints made to you by any steerage passengers that they had no berths after they were given the freedom of the social hall and dining saloon? A. No, sir.

Q. Do you know anything about what was done to keep the steerage clean?

A. It was swept down three or four times a day and washed down three or four times during the voyage home.

Q. Was any complaint made by the steerage passengers against the deck being washed down?

A. Yes, sir.

Q. What was said?

A. They claimed that it wet their baggage.

Q. Where is the steerage quarters located on the "Santa Clara"?

A. Forward on the main deck.

Q. How is this compartment ventilated?

A. Through the ports and through the hatches.

Q. Were you able to keep the ports and hatches open?

A. The first part of the trip we were not.

Q. Why not?

A. On account of the stormy weather we had to close them.

Q. After you left—state whether or not after you left the stormy—got out of the stormy weather the ports and hatches were open for air?

A. Yes, sir, the ports were opened and the hatches were lifted.

Q. Did you have some Chinamen aboard?

(Testimony of F. J. Stephens.)

A. Yes, sir.

Q. Were they quartered with the white men?

A. No, they were to one side separate from the white men.

Q. What was there to separate the Chinamen's quarters from the white men's quarters?

A. Well, a bulkhead in the center of the vessel.

Q. Which side of the ship were the Chinese passengers on? A. The port side.

Q. And the white men were on the starboard?

A. Yes, sir.

Q. Were the Chinese passengers fed at the same tables with the white passengers?

A. They were fed off to one side from the white men.

Q. At the same tables at all?

A. Oh, at different intervals, but off to one side by themselves.

Q. Was the steamer "Santa Clara"—state whether or not the steamer "Santa Clara" was any longer coming down on this trip than is usually required for vessels making that run through the inside passage?

Mr. BALDWIN.—I object to the form of that question as being leading.

A. Yes, she was somewhat longer on account of the stormy weather and on account of coming down on the inside.

Q. Was she any longer than is usually required for vessels running through the inside passage?

A. Oh, no.

(Testimony of F. J. Stephens.)

Q. Did you have the care of the—did you have the supervision of the getting of meals and the furnishing of the meals? A. Yes, sir.

Cross-examination.

Q. (Mr. BALDWIN.) Was there any complaint made to you about the meals?

A. No, sir.

Q. Not at any time? A. No, sir.

Q. Do you know why they took the inside passage?

A. Well, on account of the stormy weather, and figured that we might not have enough fuel or enough supplies—didn't know how long it would last—rather than take any chances came inside.

Q. Were they short of fuel? A. No, sir.

Q. Were they short of food?

A. No, we would have been had we continued on the outside passage, possibly.

Q. Did they break down? A. No, sir.

Q. Was there any mishap to the vessel?

A. Nothing much out of the ordinary. I think there was probably an hour's delay with some part of the machinery at one time—delayed us about an hour, if I remember right.

Q. Do you know whether there were big holes in the vessel between the timbers?

A. No, sir.

Mr. CAMPBELL.—What?

Q. Holes—whether it racked apart?

A. No, sir.

(Testimony of F. J. Stephens.)

Q. You say that there were Chinamen; were there Japs too? A. Yes, sir.

Q. About how many Chinamen and Japs would you say there were?

Mr. CAMPBELL.—We object to that as immaterial.

A. About ninety, I think it was—on or about ninety; I am not quite sure.

Q. And they had access to the other steerage quarters of the white men?

A. Yes, sir, they could pass through.

Q. And they did pass through?

A. Yes, sir.

Q. And they had to pass through?

A. Yes, sir.

Q. Did they use the same toilet?

A. Yes, sir—

Mr. CAMPBELL.—I object to all this as being immaterial.

A. — that is the steerage toilet.

Q. Did the Chinamen cook their meals at all—any of them?

A. Yes, sir; they boiled their rice some part of the time, which is the custom in handling Chinamen.

Q. Where would they empty their slops?

A. Through the chute for that purpose.

Q. Did they use the toilet for that purpose?

A. That I could not say—not to my knowledge.

Q. Do you remember when the toilet was clogged up? A. Yes, sir.

(Testimony of F. J. Stephens.)

Q. And when the refuse overflowed from the toilet all over the floor?

A. I recall the toilet being blocked up and our repairing it.

Q. And it ran all over the floor and on the blankets of the steerage passengers sleeping on the floor, didn't it? A. No, sir, I don't recall that.

Q. How many days was that in that condition?

A. I should say about two or three hours.

Q. Two or three hours; was it so more than once?

A. I could not say; I do not think so.

Q. Now, as to this vomit; it is a fact, isn't it, that this vomit was dragged all over the floor?

A. Well, of course the passengers was walking through there and bound to drag some of it, I presume, yes; we had it swept up.

Q. And remained there for several days?

A. Oh, no; we swept it up three or four times a day.

Q. Swept up the vomit?

A. Three or four times a day.

Q. Now, you said that this dining saloon was thirty feet long; how wide was it?

A. That was the width I referred to.

Q. How long was it?

A. Well, it was about probably twenty or twenty-five feet long—I could not say positively about the length, either the length or width of it.

Q. It was about as wide as it was long?

A. Well, just about.

Q. How large was the smoking compartment?

(Testimony of F. J. Stephens.)

A. The smoking-room was about thirty feet wide by about probably six or ten feet long.

Q. Six or ten feet lengthwise of the ship?

A. Yes, sir, lengthwise of the ship.

Q. And the social hall, how large was that?

A. Well, it was about half the size of the dining-room I should say.

Q. And there were settees, cushioned settees, all the way around all of these rooms, were there?

A. No, not all the way around—in the dining-room on the both sides and—

Q. Two sides?

A. Two sides—and smoking-room one side and about halfway the length of the ship—running lengthways of the ship, and the social hall, if my memory serves me, all the way around.

Q. And how many men would sleep on one side of the dining-room; we will say on the cushion there?

A. Oh, probably five.

Q. One on top of the other?

A. No, hardly.

Q. How many did you ever see sleeping in there together?

A. Well, I never counted them, but they seemed to be pretty well packed every night I went in there.

Q. Were they steerage or first or second-class passengers?

A. There was some first-class passengers.

Q. I believe you stated that there was no restriction as to where the steerage passengers might go in the ship?

(Testimony of F. J. Stephens.)

A. No, sir, they were given the freedom of the ship.

Q. When was that?

A. After we left Valdes.

Q. How soon after?

A. Well, the next day.

Q. How did you come to do that?

A. Well, on account of the crowded condition of the boat and—

Q. Just your own free will, or was there a demand for it? A. No demand was made for it.

Q. Never a demand made at all?

A. Not to me.

Q. Did you give the order, or did the captain?

A. Why, I think between us we arranged, the captain and I both suggested it in conversation that they be allowed to go in any part of the ship.

Q. And there was no objection made to any passenger going anywhere on the vessel?

A. No, sir.

Q. You mean wasn't made by yourself?

A. The steward department had instructions to permit them to use any part of the ship they so desired.

Q. How do you know how many passengers were allowed on this vessel? A. How do I know?

Q. Yes. A. By our permit.

Q. When did you read that?

A. Some little while ago—probably two years ago.

Q. Haven't read it for two years?

(Testimony of F. J. Stephens.)

A. No, sir.

Q. How do you know how many passengers were aboard? A. By our records.

Q. When did you read them?

Mr. CAMPBELL.—We object to it as immaterial. The records have been produced in court at the request of counsel for claimants.

A. Eight months ago.

Q. I believe you stated that after you left Valdes there were complaints that the steerage passengers had no berths or no room, was there?

A. Some few complained, yes, sir.

Q. When was that complaint made?

A. The morning after we left there—the morning of the 7th.

Q. Was that the reason you gave them the freedom of the ship? A. Yes, sir, in part.

Q. Where did you take on soldiers?

A. Soldiers?

Q. Yes.

A. I don't recall unless it be Fort Liston.

Q. You don't remember whether there were any soldiers aboard or not?

A. I don't recall—yes, there was too—Fort Liston—yes, that is right.

Q. How many soldiers were aboard?

A. A regiment—forty about.

Q. Did they all have bunks?

A. Yes, sir.

Q. Where was Fort Liston?

A. It is about four miles below Valdes.

(Testimony of F. J. Stephens.)

Q. This side of Valdes

A. Below—yes, this side.

Redirect Examination.

Q. (Mr. CAMPBELL.) Had special reservation been made for these troops? A. Yes, sir.

Q. What part of the ship were they quartered in?

A. Aft the dining-room.

Q. Steerage quarters? A. Yes, sir.

Q. You say that some of those who occupied the settees in the dining saloon and social hall and smoking-room were first-class passengers; who were the others that occupied them?

A. Steerage passengers; the reason of the first-class passengers sleeping there—

Mr. BALDWIN.—I object to this; it is not responsive to any question.

A. —was on account of the rooms being too close and they preferred to sleep out there, as there was more air.

Mr. BALDWIN.—I move that it be stricken.

Q. Well, to conform to the objection of counsel, I will ask why the first-class passengers came out?

Mr. BALDWIN.—I object to this also as being irrelevant and immaterial.

Q. Why did the first-class passengers come out and sleep in the social hall and dining saloon?

A. Preferred it because there was more room and better air—that was the reason some of them gave me when I questioned them about sleeping there.

Q. State whether or not you refused to allow any of the steerage passengers to sleep in the dining

(Testimony of F. J. Stephens.)

and social halls who made complaint to you that they had not been furnished with berths?

A. No, I didn't.

Q. I will ask you to state whether or not you gave such permission to all steerage passengers who made complaint to you? A. Yes, sir.

Recross-examination.

Q. (Mr. BALDWIN.) I will ask you whether or not the social hall—the dining-room you said was filled—was the social hall filled with sleeping passengers? A. Yes, yes, it was.

Q. And the smoking-room?

A. Yes, sir; I would not say filled, but there was a number in there.

(Testimony of witness closed.)

(Continued to a date subject to agreement of the respective parties.)

Sept. 23, 1908, 5:00 o'clock P. M.

Continued pursuant to adjournment.

Appearances:

IRA A. CAMPBELL, for Petitioner.

J. L. BALDWIN, for Claimant.

[Testimony of H. McKevitt, for Petitioner.]

H. McKEVITT, called as a witness on behalf of the petitioner, being first duly sworn, testified as follows:

Q. (Mr. CAMPBELL.) Your name is H. McKevitt? A. Yes, sir.

Q. Were you on board the steamship "Santa Clara" on the voyage leaving Seward on or about the 6th day of October, 1906, bound for Seattle?

(Testimony of H. McKevitt.)

A. Yes, sir.

Q. Were you employed aboard that vessel?

A. Yes, sir.

Q. In what capacity?

A. Steerage steward.

Q. How long have you been going to sea?

A. A little over twenty-five years—twenty-five years last May.

Q. What previous experience have you had in the steward's department of steamships?

A. Well, I have been through the whole department, from the bottom to the top of it.

Q. How many years have you been engaged in that work?

A. Well, twenty-five years altogether.

Q. On what waters have you sailed?

A. The Atlantic Ocean, East Indies and out on this coast over ten years—on the Alaska coast.

Q. Between here and Alaska?

A. Yes, sir.

Q. What were your duties as steerage steward on board the "Santa Clara" at this time?

A. To look after all the steerage passengers that came aboard to see that they were placed in their places and see that they got their meals regularly, to see everything was kept clean and everything like that.

Q. General supervision of the steerage department?

A. Yes, sir.

Q. Had you taken on any passengers prior to the "Santa Clara" reaching Seward?

(Testimony of H. McKevitt.)

A. Yes, sir, we took a lot of passengers on at Uyak.

Q. Who were these steerage passengers.

A. Fishermen and cannery men—go up there fishing by the season.

Q. Any Chinamen and Japanese among them?

A. Yes, there was some Chinese and Japanese also.

Q. After you left Seward did the ship return to port?

A. Back to Seward?

Q. Yes.

A. Yes, sir, we put out there once but it was blowing too hard when we got down to the entrance of the bay, so the captain turned back until the next day.

Q. What time did you leave the next day?

A. In the forenoon.

Q. In what condition were the steerage passengers at the time you left Seward?

A. They were in a condition that day when we left—after, the second time leaving we had to haul them aboard—put a line to haul them aboard—they were too helpless to get aboard any other way.

Q. Why?

A. Drunk—as soon as they did get aboard they were fighting and blood flying around all over the place.

Q. Could you control them at all?

A. We could not control them—the captain and mate was there trying to stop them, but you could never stop them fellows.

(Testimony of H. McKevitt.)

Q. What is it customary for vessels engaged in the trade with Southeastern and Southwestern Alaskan points to furnish with regards to bedding and supplies?

A. We don't furnish no bedding nor nothing like that—none of the steerages get the bedding. You get standees put up and then there is canvas cots; they all bring their own blankets.

Q. Do any of the steamships on that run furnish blankets?

A. I never knew them to, not even on the Nome run or anything like that.

Q. How many vessels have you been on out of Seattle on this run?

A. On pretty near all the northwestern runs.

Q. Who had charge of allotting berths to the steerage passengers as they came aboard?

A. When a steerage passenger comes aboard the ship we just show him where the steerage is and he goes and picks out his own berth—there is no specific berth for him in the steerage—it is not like a saloon passenger where he has got a ticket with the number of the stateroom or anything like that.

Q. On this voyage upon leaving Seward the second day was any complaint made by any steerage passengers about their not having berths?

A. Yes, there was two or three of them come around to me and said they had no berths.

Q. What did you do?

A. I went around with them, because I knew there was plenty of berths.

(Testimony of H. McKevitt.)

Q. What did you do?

A. I went down to the steerage where these other passengers were. You see there was three bunks in a tier and then a passenger would have this bunk, sleeping in, and perhaps he would have in another a roll of his clothes or something like that or some baggage, so perhaps the man thought it was somebody else's bunk until I went along and told him to take that baggage out and let—

Q. I will ask you whether or not you secured berths for all steerage passengers getting on at Seward who complained to you that they didn't have steerage berths? A. Yes, sir.

Q. Did you know of any steerage passengers who got on at Seward who didn't have steerage berths?

A. No.

Q. Were there any who made complaint to you that they didn't have any berths?

A. From the Seward passengers?

Q. Yes.

A. No, there could not have been, because there was not too many for the berths I know.

Q. Did you touch at any place between Seward and Valdes? A. Yes, we go to Latouche.

Q. Did you take on any steerage passengers there?

A. Yes, I think we took two or three steerage passengers there.

Q. Did you take on any steerage passengers at Valdes?

(Testimony of H. McKevitt.)

A. Yes, there was some steerage passengers come down.

Q. At the time that the vessel reached Valdes were there any steerage berths which were vacant?

A. I don't know for sure. There may been one or two vacant then, when we got to Valdes—in fact, I think there was.

Q. What, if anything, was done at Valdes about furnishing the steerage passengers with berths who got on at Valdes?

A. They got berths for as many as there was vacant; after that the purser came to me and said to me—

Mr. BALDWIN.—I object to what the purser came and told you.

Q. (Mr. CAMPBELL.) Go ahead.

A. He told me that when any of these passengers comes tell them to go to the office and get their money back, there is no place for them.

Mr. BALDWIN.—I move that that answer be stricken as hearsay.

Q. What, if anything—state whether or not you said anything to any steerage passengers getting on at Valdes about there not being sufficient berths and that they might get their money refunded by going to the office?

A. I told them that myself and so did the other men that were working in the steerage.

Q. Did you hear the other men telling them?

A. Certainly—could not help but hear them.

(Testimony of H. McKevitt.)

Q. Where were you at the time the Valdes passengers were getting aboard the vessel?

A. At the foot of the gangway where they were getting into the steerage, because they had to come past me in getting into the steerage.

Q. State whether or not you notified any of the steerage passengers getting on at Valdes that they could return to the office and get their money back?

A. Certainly I did.

Mr. BALDWIN.—I object to that question as leading and move that the answer be stricken.

Q. When did you give such notice to them?

A. When the passengers come aboard.

Q. What, if any, reply did they make to you?

A. They said they were going down to Seattle whether or no, whichever way they went.

Q. Did they give any reason for their so expressed intention?

A. You see there was no other ship coming down for a month or more—the “Portland” was on the rocks and the “Santa Anna” was on the rocks down here—

Mr. BALDWIN.—I move that that answer be stricken as not responsive.

A. —there was no other ship coming down for quite a while.

Q. When you left Valdes were there sufficient berths for all the steerage passengers who get on board?

A. No, there was two or three of them come around there and said they could not get any berths.

(Testimony of H. McKevitt.)

Q. What, if anything, did you say to them?

A. I told them I would try to find them what berths I could there in the steerage and after that I told them they could go and sleep in the social hall and in the saloon and cabin—they slept there and in the social hall and smoking-room.

Q. Did they do this? A. Yes, sir.

Q. Did you see any steerage passengers sleeping in the social hall and smoking-room and dining-room? A. Yes, sir.

Q. What were they sleeping on?

A. On their own blankets.

Q. Whereabouts in the—

A. In the social hall and down underneath the table and in the saloon.

Q. Was there anything in the social hall where they could sleep?

A. On the velvet cushions around the social hall and on the carpets. There is three layers of carpets on that social hall; that is almost as good as a bed.

Q. Did any of the steerage passengers sleep on the deck of the steerage quarters?

A. There was two or three there at the first, but I guess they were too drunk to go anywhere else.

Q. Whereabouts were they sleeping?

A. Sleeping right at the forward end of the steerage.

Q. In what part of the ship are the steerage passengers confined?

A. As a rule generally forward the steerage is.

(Testimony of H. McKevitt.)

Q. Was there any deviation from that rule on this vessel on this voyage?

A. They were all over the ship—they had the privilege of going all over the ship—they used the saloon toilets and everything.

Q. Is that customary? A. No.

Q. How did they come to use the saloons?

A. The captain said himself let them go wherever they pleased.

Q. State whether or not they were given permission and did go into the smoking-room?

A. You bet—sure.

Q. Are they ordinarily allowed in the smoking-room?

A. No; I think it is in that ship too that steerage passengers are not allowed.

Q. Was any restriction of any kind placed on any steerage passengers as to where they might go on board the vessel?

A. No, none whatever?

Q. State whether or not they used the first-class passenger toilets and washrooms?

A. Yes, they did.

Q. After you notified the steerage passengers that they might go and sleep in the social hall and dining saloon and smoking-room, was any complaint made to you by any steerage passengers that they didn't have satisfactory berths?

A. No, they didn't say nothing to me.

Q. What kind of wheather did you have after leaving Valdez? A. Bad weather.

(Testimony of H. McKevitt.)

Q. What was the effect upon the vessel?

A. Why, she rolled of course.

Q. Any water come upon her?

A. Oh, water—she had the seas right clean over her.

Q. How are the steerage quarters ventilated?

A. There is a hatchway over the forward entrance; there is a ventilator coming down by the companion, and then they take the hatches off there forward of the steerage.

Q. Ventilated any other way?

A. No, only ventilator—there is a ventilator in the forward end of the steerage and all the time take the hatches off, sometimes take three or four hatches off and when had weather take only one off.

Q. Is it possible to take these hatches off during the trip from Valdes out?

A. Usually take three or four hatches off and when bad weather take only one hatch off.

Q. State whether or not it was possible to have any dead-lights open on the side of the vessel?

A. No.

Q. Is it customary to have those open?

A. In fine weather, yes, sir.

Q. Which passage did you take down from Valdes?

A. We came down outside as far as Juneau; we went inside at Juneau.

Q. Were the portholes and the hatchway open on the inside passage from there down?

A. Yes, sir.

(Testimony of H. McKevitt.)

Q. I will ask you to state whether or not that caused a free circulation of air?

A. You bet it does—big holes.

Q. Was the steerage heated in any way?

A. Yes, there is some steam-pipes overhead that runs down from the wheel-house into the big steam-pipes—from the wheel-house to the forward winches.

Q. I wish, Mr. McKevitt, that you would draw upon this tablet a diagram of the arrangement of the steerage?

A. You just want to see what the steerage looks like?

Q. Yes, the diagram so that we can see how it was arranged. (Witness draws.)

Q. Now, if you will describe what you have drawn; mark the point "A" which is the bow of the vessel?

A. There is the bow; well, you come down this companion—there is a big companion down here into the sailors' quarters.

Q. What do the parallel lines marked "B" indicate?

A. The companion going up on deck.

Q. Where does that companion—where is the foot of that companionway?

A. Down here to this steerage—along the hallway into the steerageway.

Q. Hallway marked "1" and "2"?

A. Yes, sir.

Q. How do they get into the steerage?

A. Right through here.

(Testimony of H. McKevitt.)

Q. Through this door marked "3"?

A. Not in that door; through here—this is a separate door altogether.

Q. Door marked "4"?

A. Yes, sir; this is a table.

Q. What does the lines "5" and "6" represent?

A. That is the table—one of the dining tables.

Q. "7" and "8"?

A. That is a table too; this is up against the ship's side; this is a bulkhead running right up to the main deck.

Q. Line "C" and "D"?

A. A bulkhead running up to the main deck.

Q. Is that a solid bulkhead? A. Yes, sir.

Q. Does it separate the steerage into two parts?

A. Two parts, yes, sir.

Q. It does not run clear through to the fore bulkhead?

A. No, there is—but you can get through a door here into this bulkhead.

Q. Through a door marked "9"?

A. Yes, sir.

Q. What does this room—

A. That is the sailors' and firemen's toilet there.

Q. There is, the room marked "E" is the sailors'— A. And firemen's toilets.

Q. Do the steerage passengers use them?

A. Yes, sir.

Q. Did they use them on this voyage?

A. Yes, sir; on this side there is a big washroom and toilet.

(Testimony of H. McKevitt.)

Q. Draw a line around the toilet.

A. Here is the toilet on this side and over here is a toilet.

Q. That is the toilet marked "F"; what toilet is that?

A. That is the steerage toilet, especially for the steerage.

Q. How do they get into this steerage toilet?

A. Through the door here.

Q. Through the door marked "3"?

A. That is the door right there; there is another door comes out—

Q. What—in the alleyway to go into the kitchen, the door marked "10," is another door?

A. Yes, sir—turn around and go on deck here.

Q. The kitchen is toward the aft end of the ship?

A. Yes, sir, this is about midship here, and that is where the kitchen is.

Q. Where is about midships—the line marked "G" and "H"?

A. Yes, sir.

Q. What are the parallel lines marked "12"?

A. That is another companion.

Q. Where does that lead to?

A. Right on deck again.

Q. Whereabouts are the berths?

A. The berths are right in this space here.

Q. Between—

A. Between the two tables.

Q. On the starboard side of the ship?

A. On the starboard side—that is right.

(Testimony of H. McKevitt.)

Q. Where were the white steerage passengers quartered?

A. These are all for the white on this side.

Q. On the starboard side of the bulkhead between the two tables marked "5" an "6" and "7" and "8"?

A. Yes, sir.

Q. Were there any Chinese and Japanese quartered among the white people?

A. No.

Q. Where were the Chinese and Japanese?

A. Over on the port side.

Q. In the part marked "Chinese and Japanese"?

A. Yes, sir.

Q. When, if at all, were the Chinese and Japanese in the white men's steerage?

A. Oh, they never come in, the Chinese never come in here only chinks going along to make tea—they make their own tea.

Q. Where did they make their tea?

A. Down to the kitchen, and asked the cooks for water and come past the kitchen door.

Q. Past the white men's steerage?

A. Right down the hallway—two hallways here.

Q. Where were the white passengers sleeping on the floor that you speak of?

A. Right forward here—right here—a big space here.

Q. Just draw the space.

A. It is like a hatchway in fact, up on top—see this hatchway we will call it.

Q. Mark the hatchway "I."

A. Yes, sir.

(Testimony of H. McKevitt.)

Q. Is that the hatchway?

A. That is the hatchway; now, there is hatches on top of that on the upper deck; in fine weather all those hatches are off; that is where I seen those people laying on the deck—that is the only place I did see them laying on the deck, and they were up against this bulkhead.

Q. Where did the passengers wash?

A. Up in this washroom here.

Q. Washroom marked "F"?

A. Yes, sir; you see there is three or four faucets around here—the washstand bowl runs around that way.

Q. What was the effect of the rough weather which you encountered after leaving Valdes upon any of the steerage passengers?

A. Vomiting and seasick, of course.

Q. And were any receptacles provided by the ship which might be used by seasick passengers?

A. We had lots of these little kits put down, two foot in diameter, I think—put them down and strapped them all around the steerage, different places.

Q. Were they used by the steerage passengers?

A. Some of them used them and some would not use them at all—just vomited right out anywhere.

Q. Where to? A. On the deck.

Q. Who had charge of keeping the steerage clean? A. I had charge of that.

Q. State fully what was done in keeping the steerage clean on the voyage down?

(Testimony of H. McKevitt.)

A. When we first turned out in the morning we turned out at half past five in the morning—

Q. Whom do you mean when you say we first turned out?

A. That is me and the other fellows working in the steerage with me.

Q. How many were working in the steerage with you?

A. Five of us, I think, altogether. Come down and the first thing we do is to sweep out everything—sweep out everything and clean the dirt that is collected from the night before—sweep it all out and then laying both of these tables up and get the sugar and bread and butter and lay the cups and saucers, plates and knives and forks—

Q. State in full what you did to keep this steerage clean?

A. And then started the breakfast about half-past six—well, a little before that, I guess. Where you have more than one or two settings, start it about six o'clock; wash up everything and sweep it down and washed it down after breakfast.

Q. Wash it down with the hose?

A. Didn't always wash it down with the hose; the boatswain come along with the hose every couple days.

Q. What do you mean by saying you washed it down?

A. He come down with the broom and turn the water on that.

Q. How often did you sweep the steerage?

(Testimony of H. McKevitt.)

A. The steerage is swept after every meal—do that because when they are eating or anything like that they throw it on the deck.

Q. They did do that? A. Sure.

Q. I will ask you whether it is true that you left the vomit from the passengers upon the deck until the day before you reached Seattle?

Mr. BALDWIN.—I object to this question as leading and suggesting an answer.

Q. State whether or not you left the vomit upon the deck until the day before you reached Seattle?

A. I should say not.

Mr. BALDWIN.—I make the same objection to this question and move the answer be stricken.

Q. Did you, or did you not?

A. No, I didn't.

Q. When did you clean up the vomit that was on the floor?

A. I cleaned it every possible time I seen it, because there was always somebody left in charge of the steerage. There would always be somebody there—could not go and leave it on the deck—everybody would be carrying it, walking and carrying it all over the deck. Anything left on that you are going to carry it into the saloon—you could not leave a lot of stuff on the deck there to carry all over the ship.

Q. Did you leave it on the deck?

A. No, I never did; when they came in to wash it out with the hose there—going to put up the baggage in the bunks there—they raised the question

(Testimony of H. McKevitt.)

because I was going to scrub it down. I had to go and bring the captain down to put the hose on there.

Q. What did the captain do?

A. Told me to go ahead and scrub it out. When the mate came down I had to put it up then.

Q. Did you ever scrub it out with the hose?

A. Yes, sir, certainly; there is a great big scupper here.

Q. Where?

A. Here; there is a great big sink.

Q. Mark the sink "J."

A. And above this sink there is a big rack what we have for keeping cups and things like that; underneath the sink is a great big scupper, so when we scrubbed it down the water all run down.

Q. How many passengers could you seat at these tables at each sitting?

A. About forty at both tables—of course a little more—didn't want to crowd them.

Q. What dishes were furnished steerage passengers?

A. What dishes did they use for eating?

Q. Yes.

A. All these white enamel.

Q. Were seats furnished passengers to sit at the table?

A. Well, we had benches when we went up there, but before we got back to Seattle they were pretty well smashed up the way they were carrying on there.

Q. Go ahead and describe how you set the meals.

(Testimony of H. McKevitt.)

A. For each man we put down a plate, cup and saucer, knife and fork and spoon, all laid out on the table for each man, and put all the hot dishes on the table before you let them sit down to eat. You have to have someone there to watch them to keep them from grabbing before you get through.

Q. What did you do after you got it on the table?

A. Ring the bell.

Q. What did the passengers do then?

A. Just jumped at it.

Q. Did they come in a gentlemanly manner?

Mr. BALDWIN.—I object to this as incompetent and immaterial.

A. No, they did not come in a gentlemanly manner.

Q. State how they acted.

A. They were more like a lot of savages than anything else there.

Mr. BALDWIN.—I move that this answer be stricken as incompetent and immaterial.

Q. What did you give the steerage passengers for breakfast?

A. The usual food that is given on a steerage vessel and on all these ships—mush and mulligan, Irish stew, corned beef hash—

Q. What did you give them for breakfast?

A. Mush, mulligan—Irish stew—corned beef hash, bread and butter, stewed fruit, and then at dinner time there was always soup—

Q. Did you serve dinner at night, or when?

(Testimony of H. McKevitt.)

A. At twelve o'clock, soup, roast beef, corned pork, corned beef and cabbage, pork and beans, potatoes—

Q. I will ask you whether or not it is the customary fare given to steerage passengers on vessels running to Alaska?

A. There is no difference—it is the usual run of steerage food.

Q. Was the usual run of steerage food given this time? A. Yes, sir.

Q. Was any complaint made to you by any steerage passengers about the quality of the food?

A. No, there was no kicking about the grub.

Q. Were any complaints made to you at all about the way they were fed?

A. No, from what—I guess they all wanted to get in at the first table, as if they were afraid if they didn't get in at the first table they would be missing something. We had soldiers coming down—

Q. Where were they quartered?

A. In the aft end of the ship; the first two or three meals out when we would ring the bell these soldiers would come in with the white men and asked me, "Couldn't we all eat by ourselves?" I said, "If you are agreeable when we feed all these passengers here." They said, "We will wait," and the soldiers all ate together—they were the last to eat—they never kicked about the grub.

Q. Was the food given the soldiers any different from that given to the other steerage passengers?

A. No, just exactly the same.

(Testimony of H. McKevitt.)

Q. Did you eat any of this food yourself?

A. Sure, I ate it.

Q. State whether or not it was true that the meat was rotten and stunk?

A. No, the meat rotten in October, no.

Q. Did the meat stink that was served to them?

A. No.

Q. Did this mulligan stew that was served to them, stink? A. No.

Q. How many settings were made for the white men?

A. I think we had about four sittings altogether, including the soldiers; about the third sitting or something—even at the third sitting there would be plenty of places and all like that, but I would not put anybody there—just let them finish and set it up altogether for the soldiers.

Q. What did you do after the first setting had eaten?

A. Well, as a man finishes you take his plates away, whatever it is.

Q. What did you do at this time—what did you do after the first sitting had finished?

A. Well, washed them all up and lay them over again.

Q. What kind of food was furnished the second and third sittings?

A. Exactly the same as the first?

Q. State whether or not it was the food that was left over after the first sitting had eaten?

(Testimony of H. McKevitt.)

A. Oh, no—that cook that was there would not go and give you that stuff again—on the table enough at hand, but took it to the kitchen.

Q. What would you do with it?

A. Take it over to the sink to wash the dishes out.

Q. This sink marked “J”?

A. Yes, sir.

Q. What would you do with the food left at each sitting? A. Dump it.

Q. Where? A. In the dump.

Q. In this chute?

A. We have a big chute where we dump all our stuff out; there is two men carrying dirty dishes over to the man washing dishes, another man puts them over here, another man there, and by the time you are ready for the second table you have all the dishes ready.

Q. How did you set the second table?

A. Exactly the same as the first.

Q. What food did you put on the second table?

A. Exactly the same as the first.

Q. I will ask you whether it is true that the refuse from the tables was dumped down the toilet?

A. No.

Q. Where was the food for the Chinese and the Japanese cooked?

A. In the same kitchen.

Q. Did they do their own cooking? A. No.

Q. Where were they fed?

(Testimony of H. McKevitt.)

A. Over in their steerage where they lived, just the same as this one—the white men in this and the Chinese and Japanese in this one.

Q. Were the tables just the same?

A. Just the same—not quite as good as these tables.

Q. Who waited on the Chinese and Japanese?

A. Themselves—they picked out their own men.

Q. Each Chinese waited on himself?

A. No, not himself—they picked out some of their own men.

Q. Where did they get their food?

A. Right at the same kitchen as we got it for those other steerage.

Q. Is there a separate kitchen where the food for the steerage is cooked apart from the food for the saloon passengers?

A. No, sir, one kitchen for saloon passengers, captain and everybody.

Q. Do the same cooks cook both?

A. Three cooks cook it all.

Q. I will ask you if at any time the toilet became clogged? A. It did.

Q. Did it run over?

A. It certainly did run over—it flooded everything.

Q. What was the cause of this clogging?

A. There was an empty salmon can in it.

Q. How do you know?

A. I went over the side there in the bowlin and took an iron bar there to pry out and forced it up and hauled out the empty salmon can.

(Testimony of H. McKevitt.)

Q. Where had the salmon can lodged?

A. Right down in the toilet, just in the bend.

Q. Where was this salmon can obtained from?

A. From the hatch down underneath that hatch.

Q. What was underneath the hatch?

A. Salmon—it was loaded with salmon. Some of these passengers had been breaking into that salmon. There was a whole pile of boxes had been broken open.

Q. Did the toilet overrun any other time.

A. No.

Q. I will ask you to state whether or not there was constantly running water through the toilet?

A. Yes, sir, you can't stop it from running unless you go down to the engine-room and tell them to shut it off.

Q. Was it shut off at any time? A. No.

Q. State whether or not it was possible.

A. Only at that time when that can was there I had to go and get them to shut it off when I went over the side to get that can out.

Q. Was it quiet weather when you went over the side? A. No, it was not.

Q. I will ask you to state whether or not you had any difficulty with a dog in the stowage?

A. A dog—there was only one dog here that used to come down here, but then the mate would always yank it up.

Q. What do you mean?

A. He would not allow it to stay down there—took it up there.

(Testimony of H. McKevitt.)

Q. Where? A. Up on deck.

Q. How did it get down there?

A. They took it down there in the night-time, I guess.

Q. Did you see any member of the crew bring it back to the steerage?

A. No, they would not do it.

Q. I will ask you to state whether or not it is true that this dog vomited all over the floor?

A. No, not as I know of.

Q. Did you see it?

A. No, I didn't—very seldom you ever see a dog vomit at sea anyway.

Mr. CAMPBELL.—I offer in evidence this drawing as an exhibit.

(Drawing offered in evidence by counsel for petitioner, marked Petitioner's Exhibit "G," attached hereto and returned and filed herewith.)

Cross-examination.

Q. (Mr. BALDWIN.) How many standee berths were there in the steerage?

A. I could not exactly tell you how many we had up—there must have been about over a hundred I guess.

Q. About a hundred?

A. Over that—yes, there must have been over a hundred.

Q. How much over a hundred?

A. What am I talking about—I am forgetting the other steerage too—I am just thinking of this one.

(Testimony of H. McKevitt.)

Q. Which one? A. This one.

Q. You were thinking of the white men's steerage?
A. Yes, sir.

Q. There were a hundred in that?

A. No, there was not quite a hundred in that.

Q. How many? A. Not quite a hundred.

Q. Seventy-five? A. Yes, fully that.

Q. How many in the Chinese quarters?

A. There was more in the Chinese quarter than there was in the other one.

Q. There were about seventy-five on this side?

A. I don't say there was seventy-five—there was fully seventy-five—more, I guess.

Q. How many steerage passengers did you have when you got to Seward?

A. I could not tell you exactly now how many we had.

Q. About how many white steerage passengers did you have?

Mr. CAMPBELL.—We submit that the records which have been offered speak for themselves—the passenger list.

A. I guess we must have had about, I think it was about ninety altogether.

Q. About ninety— A. I think so.

Q. —when you arrived at Seward—ninety white steerage passengers when you arrived at Seward?

A. No, there was not ninety white—I mean altogether.

Q. I am speaking of the white steerage passengers when you arrived at Seward?

(Testimony of H. McKevitt.)

A. There would not be much over forty of the white steerage by the time we got to Seward.

Q. And altogether there were ninety?

A. Well, that is the Japs and the Chinese.

Q. How many Japs and Chinese were there?

Mr. CAMPBELL.—We object to that as immaterial—by the time they got to Seward; all the claimants in this case, the passengers, got on after they reached Seward.

A. About seventy or eighty, something like that.

Q. Seventy or eighty?

A. I think so, something like that.

Q. Well, your figures don't tally up—seventy or eighty Chinese and ninety altogether.

Mr. CAMPBELL.—We object to counsel arguing with the witness.

Q. Do you remember how many you had?

A. No, I don't remember.

Q. Do you remember anything about it?

A. Not—I don't know exactly how many Chinese and Japs—there were three different lots came aboard there—there was Chinese and Japs and there was white men.

Q. What is the third lot?

A. Yes, Chinese, Japanese and the whites.

Q. Chinese one lot and the Japanese another?

A. The Chinese and the Japanese together, certainly they are two different lots, aren't they?

Q. How many got on at Seward?

A. There was only a few got on at Seward.

Q. How many?

(Testimony of H. McKevitt.)

A. I don't know—I could not tell you how many got on at Seward.

Q. Well, approximately?

A. There was not many, I know—not very many.

Q. Forty? A. Forty, no.

Q. Thirty?

A. Maybe about twenty; something like that.

Q. About twenty at Seward; how many got on at Latouche?

A. There would not be many there—there is never many there—three or four.

Q. How do you know there were not many there?

A. Because they never do get many there.

Q. How many got on at Valdes?

A. Only a few got on there, because we hadn't enough room for many of them there.

Q. Because you hadn't enough room?

A. No.

Q. Is that the reason that you know they didn't get on? A. Sure.

Q. Don't you remember?

A. How many got on?

Q. Yes. A. No, I don't.

Q. Do you remember about how many got on at Valdes?

A. No, I know it was a very small amount got on there, I know that.

Q. Thirty? A. No, it was not thirty.

Q. Twenty?

A. There might have been anyway from ten to twenty; something like that.

(Testimony of H. McKevitt.)

Q. From ten to twenty. Where did you stop next after Valdes? A. Juneau.

Q. That was your next stop, was it?

A. Yes, sir.

Q. You are positive of that?

A. I don't know whether we went to Uyak at that time or not.

Q. As a matter of fact, you don't particularly remember this trip from the other trips, do you?

A. Yes, I do remember it.

Q. What do you remember it by?

A. By the work I had.

Q. Remember it because you had more work?

A. I remember it for several things.

Q. What do you remember it by?

A. Well, I remember it was an eventful trip. I never had a trip like it before since I have been running up there—a lot of drunks fighting and scrapping all the way down.

Q. What were they scrapping about?

A. Because they were drunk—they didn't know what they were scrapping about amongst themselves.

Q. Who was scrapping?

A. All those passengers.

Q. And the crew? A. No.

Q. Were they scrapping with the crew at all?

A. No, amongst themselves.

Q. What had you to do with their scrapping?

A. It didn't make it very nice for me when I had to work in the place—laying there drunk all the

(Testimony of H. McKeivitt.)

time—they were drunk when they came aboard the ship and when they got to Seattle.

Q. Where were they drunk?

A. In the bunks—go and ask them to go and eat supper and they would ask you if their breakfast was ready.

Q. You don't remember from any other trip, do you?

A. I don't remember another trip like it.

Q. Couldn't they tell you whether they were getting supper or breakfast?

A. I told you I asked the man to get up and asked him—it was supper-time and wanted him to go and eat, and he asked if breakfast was ready.

Q. Were all the meals alike?

A. We had to be there with the meals just the same whether they were drunk or sober or whether anybody would eat it or not.

Q. How many of them were drunk?

A. The best part of them were drunk.

Q. How many?

A. There was enough hollering and shouting there for all of them to be drunk—I suppose all of them was not drunk.

Q. What did they do when they were drunk?

A. Fighting amongst themselves and having a good time as they thought, I suppose.

Q. Did they vomit?

A. Vomit, yes; they was not particular where they vomited either—he would not get out of his bunk.

Q. He would not get out of his bunk?

(Testimony of H. McKevitt.)

A. He would not get out of his bunk to vomit—he would just lean over and vomit.

Q. How many did that?

A. Quite a few of them—well, it was bad weather, too, of course.

Q. Was that because they were drunk?

A. No, I don't say it was all because they were drunk—it was bad weather too.

Q. That was because it was bad weather?

A. Yes, sir.

Q. Well, they were fighting amongst themselves; was any of them hurt?

A. Yes, sir, there was plenty of black eyes knocking around there.

Q. Among the white steerage passengers?

A. Yes, sir.

Q. How many would you say got black eyes?

A. I could not tell you how many, but I remember seeing one or two of them there pretty well marked up.

Q. What else do you remember it by?

A. Nothing else to remember it about only just the way they were carrying on; that is all I remember.

Q. Do you remember it because there was so many of them? A. There was a big crowd of course.

Q. Why were they worse on this trip than on any other?

A. I suppose the weather being so bad and these fellows drinking and knocking around and quarreling amongst themselves made it worse than any other

(Testimony of H. McKevitt.)

time. I have been up there with a big crowd of steerage passengers and not a word—you wouldn't think there was anybody aboard.

Q. Did it make it disagreeable for you?

A. Yes, sir.

Q. In what respect?

A. The way they were acting around the steerage there—I tried to keep that place clean—they were kicking around and vomiting.

Q. They didn't scrap with you?

A. They didn't have anything to scrap with me about—it was amongst themselves, the scrapping.

Q. You don't remember whether you stopped anywhere between Juneau and Valdes?

A. I am not sure whether we did stop at Uyak or not—sometimes we do and sometimes we don't. I can't say whether we did that particular trip.

Q. Did any of them complain that they didn't get enough to eat? A. Didn't get enough?

Q. Yes. A. No.

Q. You never heard that?

A. No, there was enough there to eat for everybody.

Q. You never heard any complaint about there not being—

A. I seen fellows coming down late there and wanted to know if they could not get anything to eat.

Q. Coming down late? A. Yes.

Q. How did they come to come down late?

A. They were all over the ship—they had the privilege of going everywhere in the ship—you

(Testimony of H. McKevitt.)

couldn't go to the other end of the ship chasing after them when you ring the bell.

Q. That was the only complaint they made to you—there was some come late?

A. Complained that they couldn't get it?

Q. Yes?

A. That is the only way they couldn't get it when they didn't come at the time.

Q. That is so on every trip?

Mr. CAMPBELL.—We object to that as immaterial.

A. If a man comes late you have the table all cleared and give them plenty of time—you can't leave the grub on the table all the time.

Q. Are you with the "Santa Clara" now?

A. No.

Q. What vessel are you on now?

A. "Pennsylvania."

Q. What vessel have you been on since the "Santa Clara"?

A. "Pennsylvania," "Saratoga," "Northwestern," "Olympia."

Q. Did they always serve the same kind of meals in the steerage? A. Just about the same.

Q. Did you ever have any complaints?

A. No, no complaints.

Q. Never had any complaints that the food was not up to the standard?

A. No, that is about the only time I heard them kicking about—any other kicking at all.

Q. Which—on the "Santa Clara"?

(Testimony of H. McKevitt.)

A. Yes, sir.

Q. That is the only time they kicked?

A. That is about the only time—that was their own fault. You couldn't expect to keep it there on the table all the time.

Q. How many steerage passengers did you have altogether?

A. Somewhere about one hundred and fifty, or more, I think, as near as I can remember.

Mr. CAMPBELL.—Don't testify to anything you don't know.

A. (Continuing.) I would not say for certain, but I know there was a big crowd.

Q. Then, if there were dogs aboard there—were there dogs aboard?

A. I only seen one dog—I seen him a couple of times—that is all I seen.

Q. Was that on this trip? A. Yes, sir.

Q. You are sure of that? A. Yes, sir.

Q. There weren't two dogs there?

A. I don't remember seeing two, although there might have been two for all I know, but I remember seeing only one there, because I remember the mate coming down there particularly one morning and taking him up on deck.

Q. What makes you think that was on this trip?

A. Because I remember the mate coming down about it.

Q. Didn't you have a mate on every ship; how do you connect that with this voyage?

(Testimony of H. McKevitt.)

A. Because the mate never interferes with the dogs at all.

Q. How do you connect that with this voyage on the "Santa Clara"?

A. Because it is an unusual thing for a mate to come down and interfere with the dog—get hold of the dog or anything like that.

Q. Did he bring the dog down?

A. No, he took it up on deck.

Q. Why didn't you take it up?

A. I ain't got anything to do with it—some passenger has it there—dogs is always kept on deck there.

Q. It is your business to keep the place clean, isn't it?

A. Yes, sir; so it was clean. The dog didn't make any muss that I seen there. The dog was under this hatchway here out of the road of everybody.

Q. You had charge of the steerage?

A. Yes, sir.

Q. Why didn't you take the dog up?

A. The dog was there—put there at night-time—that is all I seen of him.

Q. How did the mate come to come down and get him?

A. I suppose somebody must have gone up and complained to him.

Q. Didn't they complain that you weren't attending to your duties? A. Not that I know of.

Q. Were any of your laborers there—workaways?

A. There was a couple of them workaways.

(Testimony of H. McKevitt.)

Q. Two of them?

A. Yes, I think it was two—yes, two.

Q. And they were paid by the passengers, weren't they?

A. Paid by the passengers?

Q. Yes.

A. Indeed they wasn't—the passengers wouldn't pay them.

Q. That is the only pay they got, wasn't it, what they could pick up from the passengers? ---

A. They got their passage down free.

Q. And they don't get paid anything else?

A. No.

Q. Did any of the passengers ever pay anybody for giving them food?

A. Not as I know of.

Q. Never did?

A. No.

Q. You never heard of such a case.

A. I never seen any.

Q. Never heard of it?

A. I have heard of it, yes.

Q. Never came to your notice?

A. No.

Q. Then when you testified in the hearing in the Superior Court that it was so, is it true or not?

Mr. CAMPBELL.—We submit the witness did not testify.

A. You asked me if I had ever heard of such cases—I say, yes, I have heard of such cases.

Q. And you testified that they had to pay to get food?

A. They had to pay to get food? I never said anything of the sort. That these people had to pay on this particular trip to get food?

(Testimony of H. McKevitt.)

Q. Yes, sir. A. I said so?

Q. Was that true or not?

A. No, sir; I never said they had to pay to get food.

Q. Didn't you say that they paid the officers?

A. I didn't, no, sir.

Q. Didn't you say that they feed the officers?

A. The officers gave them a fee?

Q. That the passengers gave the officers a fee—gave them money? A. Not that I know of.

Q. If you did say so—

A. There is nothing to prevent them going in the saloon there—I don't know anything about that. They could go right in the cabin dining-room there and fee is all I know.

Q. If you did say it, it was false, wasn't it?

A. That they had to pay?

Q. That they did pay?

A. They didn't pay to my knowledge.

Q. Then it was false, was it?

A. I never said it.

Q. You are sure of that? A. Sure.

Q. How much room was there between the bunks here and the tables?

A. About two foot, I guess—between this table (indicating) and the tier of bunks, about two foot of space, I should think there would be.

Q. And there were benches there to sit on?

A. There was at the first start before they got broke up—bad weather, and scrambled all over.

Q. On this particular trip? A. Yes, sir.

(Testimony of H. McKevitt.)

Q. You are certain of that?

A. I am sure benches were there at the start.

Q. You are as sure of that as you are of anything else you have testified here to, are you?

A. Yes, I am sure of that.

Q. How are you sure of it?

A. Because a lot of these passengers used to take some of these benches and started gambling on them out here under this hatchway. I had to go hollering after them to get the benches, so I remember that well—under this hatchway, take them out here, play cards on them.

Q. Then the people that testified in the Superior Court that there were no benches—

Mr. CAMPBELL.—We object; there is no evidence in this case or any testimony given in the Superior Court.

Q. —stated a falsehood, did they?

A. I know there was benches there to start up; they didn't last the trip down because they all got smashed up.

Q. As a matter of fact, most of your statements are inferences from your general knowledge, aren't they?

A. All my statements—

Q. You know there were only two or three—

Mr. CAMPBELL.—Let him answer the question.

Q. You know there were only two or three that got on at Latoosh, because there are never more than two or three that get on there?

A. There was not more than two or three that got on there.

(Testimony of H. McKevitt.)

Q. What time did they leave Seward the second time?

A. In the forenoon, I guess it was.

Q. What time in the forenoon?

A. I could not tell—sometime in the forenoon. I could not say exactly what time it was.

Q. Night or day? A. Day.

Q. It was not about four o'clock in the morning?

A. No, we came down from Seward once and then put back—it was in the morning.

Q. You don't remember anything about it, do you? A. Certainly I remember.

Q. I mean what time it was?

A. Oh, it was in the forenoon, I think it was, the second time we left.

Q. Now, you say that the Chinese and Japs were all the time making tea and something—making tea, were they?

A. I didn't say they were all the time making tea.

Q. I think those were your words?

A. When I mentioned Chinese and Japs you asked me if they had any access to this way and I said they came down this way to make tea.

Q. State how they came down—did they come all the way down through the white men's steerage?

A. Yes, sir.

Q. Did they use the white men's toilet?

A. Yes—well, this one and the other one—they had the privilege of both of them—everybody used, the white men and Chinese and Japs both used this and that.

(Testimony of H. McKevitt.)

Q. How much space was there in the white men's steerage to pass lengthwise—how much space was there in the whole place?

A. Two feet here and about two feet—oh, no, more than that—there is about three feet in the center, I should think, and then there is another space over here from this table.

Q. There were two tiers of standees then?

A. Yes, sir; there is two little hallways to go up and down.

Q. Two or three?

A. Two—well, you can't call this right here. A man wouldn't come this way between the table and the bunks.

Q. You mean you would come between this table and the bunks?

A. Yes, sir, there was more room on this side—this middle hallway.

Q. This drawing here represents the comparative length of the tables, does it?

A. Well, I am giving you as near as I can.

Q. How much room was there between the bulk-head here and this—what is this partition?

A. There is another partition from where the aisles are.

Q. Partition marked "1" and "2," how much space was there there?

A. About four foot, yes, about four foot between them two right along there.

Q. How much space between the end of the table and the point marked "2"?

(Testimony of H. McKevitt.)

A. Oh, there is—there would be about twelve or fifteen feet, I guess; that is, from the end of this table up to the end of this bulkhead—about twelve or fifteen feet. There is two great big tiers in there they used to use at one time.

Q. And the water came pouring out of the toilet out through here, did it?

A. The time it was choked up it did; yes, sir.

Q. When it was choked up did it run all the way around here? A. Yes, sir.

Q. Clean down to here? A. Yes, sir.

Q. Clean down to the door marked “10”?

A. No, it didn't run right down, but was overflowing, and of course a lot of it could run away down this scupper—there is a big scupper underneath—a sink.

Q. At “J”? A. Yes, sir, that is a sink.

Q. And after every meal you would sweep out under the table?

A. Swept out all over the steerage.

Q. All over the steerage? A. Yes, sir.

Q. And you would clean the tables?

A. Why certainly.

Q. Did you use the same mop to clean the tables as the floor?

A. Never used a mop on the tables yet—got this white oilcloth on it.

Q. Did you have a white oilcloth on the table?

A. Bad weather roll a towel.

Q. Did you have a white oilcloth on both tables at every meal?

(Testimony of H. McKevitt.)

A. Always—sometimes roll a towel on the top.

Q. And sometimes towels over the white oilcloth?

A. Yes, sir.

Q. How many times?

A. Very often in bad weather when she was rolling very bad.

Q. Why when she was rolling?

A. That saves your dishes from rolling off.

Q. You are sure that was so on this voyage, are you, that you had white oilcloth on the tables?

A. Yes, sir.

Q. You are as positive of that as anything else you have testified to?

A. Yes, sir, I am positive of that.

Q. Where were the smoking-room and the saloon that you speak of?

A. Oh, that is up on the main deck; this is down on the lower deck; this is the steerage deck; the smoking-room is up on the deck here where you come up this companion.

Q. How many people would the smoking-room hold?

A. It would hold the whole breadth of the ship—would hold a hundred.

Q. The smoking-room would hold a hundred?

A. Yes—a very big smoking-room.

Q. How many could sleep there?

A. I think there is fifty could sleep there.

Q. How many did you ever see sleep there?

(Testimony of H. McKevitt.)

A. I seen quite a number sleep there. I never stopped to count them. I never used to go in there much.

Q. About how many?

A. I seen them sleeping on the settees there all along.

Q. How many slept there on this ship at all?

A. Sometimes there would be more than others—I think some of them would rather sleep there than in the bunks.

Q. You think there were how many?

A. I could not tell you. I didn't stop to count them.

Q. Was there as many as twenty?

Mr. CAMPBELL.—We submit the witness has answered the question.

A. Yes, sir.

Q. Were there as many as thirty?

A. Yes, sir.

Q. Were there as many as forty?

A. There must.

Q. How many were there in the social hall?

A. That was full too.

Q. How many would that hold?

A. It would hold as much as the smoking-room.

Q. As any or more?

A. It would hold as many.

Q. And it was occupied about the same as the smoking-room? A. Yes, I guess it was.

Q. There was about thirty or forty in there too?

(Testimony of H. McKevitt.)

A. I don't say there was thirty or forty in there all the time in any of them—it would hold that many.

Q. It would hold more than that—it would hold a hundred, but I mean how many were sleeping there?

A. I didn't go and look there every night to see how many were sleeping there. I would just casually see them sleeping there; there was some sleeping in the saloon too.

Q. How many would the saloon hold?

A. You could put two hundred in there.

Q. Did you see two hundred of them sleeping in there?

A. I seen them sleeping under the tables.

Q. How many did you see there?

A. I don't know how many was under the tables; you could see they were sleeping there by the blankets—how many I don't know.

Q. How many would you say?

A. I would not say how many was there, because I don't know—I could just see as I was passing there under the tables and there was about five tables there.

Q. Did you see ten or a hundred?

Mr. CAMPBELL.—I submit the witness has answered the question.

A. I didn't count them—I just seen the blankets.

Q. Did you see who they were?

A. No, I just seen the people sleeping there.

Q. Did you see who they were in the social hall?

A. No, I didn't—I couldn't distinguish them.

(Testimony of H. McKevitt.)

Q. Did you see who they were in the smoking-room?

A. No, only knew they were people; that is all.

Q. Why did you have to go into Juneau?

A. It was such bad weather.

Q. What effect did that have on Juneau?

A. Any ship when she is getting in very bad weather out there they always try to get into Juneau to get out of it.

Q. They didn't go to Juneau then to get other supplies?

A. Oh, no, we would not go there on purpose for that—in order to get in out of bad weather, that was the size of it, and pretty lucky to get into Juneau too.

Q. As a matter of fact, did they take on fresh supplies at Juneau?

A. Oh, yes, took on some stuff there.

Q. Got a lot of meat there, didn't they?

A. Yes, got fresh meat there.

Q. Would they have had enough meat for the voyage if they hadn't gone there?

A. Oh, I guess we would—plenty of stuff in the storeroom—always had this emergency stuff.

Q. Was there plenty of stuff all the time?

A. You bet there was.

Q. Never had any shortage? A. No.

Q. All fresh meat all the time?

A. Yes, we had fresh meat all the time.

(Testimony of H. McKevitt.)

Q. And you never heard any complaint of anyone that the meals were on the "bum" or not up to the standard? A. No.

Q. Were you down in the saloon in the steerage most of the time?

A. I was there all the time.

Q. Never heard any complaints—never heard anyone grumble?

A. I heard plenty of kicking like—just the usual kicking there—"Give us some more of this old mulligan and throw down that hash; here sling over this."

Q. Do you call that kicking?

A. I should say it is kicking.

Q. How is that kicking—is that a reflection on the mulligan? A. Well, I suppose it is.

Redirect Examination.

Q. (Mr. CAMPBELL.) Do you know the actual number of berths that there were in the steerage?

A. No, I forget now exactly.

Q. I am asking you whether you know or not—not whether you guess. A. No.

Q. Do you know the actual number of passengers that were gotten on at these different points?

A. No.

Q. Your estimate of the number of passengers that got on at the different points then is simply a guess at this time? A. Yes, sir.

Q. And you are guessing at the number of berths there were in there?

A. Yes, I am only just—

(Testimony of H. McKevitt.)

Q. Approximating it? A. Yes, sir.

Q. Where did you take on the soldiers?

A. Valdes—at the fort there.

Q. Fort Liston? A. Yes, sir.

Q. Where is that from Valdes?

A. On the other side of the bay, three miles.

Q. Did you touch there before or after you left Valdes?

A. Generally touched there going and coming—drop the mail there and perhaps call for the mail coming back.

Q. Did you at any time count the number of passengers who were sleeping in the smoking-room, social hall and dining-room?

A. No, I didn't count them—I had no reason to count how many was there. It was not like any other time where you stop a steerage passenger. There is other ships, the "Pennsylvania," when you see the steerage passenger, you stop him and send him back—the captain and everybody else said let them go and I had nothing to do with where they went then.

Q. Did any of the passengers whom you saw sleeping in the smoking-room or dining saloon or social hall have their blankets with them?

A. Oh, yes, they had blankets with them.

Q. Did the first-class passengers furnish their own blankets? A. First class—no.

Q. Do you know whether or not any of the steerage passengers who had berths went to the upper

(Testimony of H. McKevitt.)

deck, to the social hall, smoking-room and dining-room to sleep?

A. Yes, they did, because there was lots of them went up there—there was gambling going on up there and you would see lots of them sleeping there all night.

Recross-examination.

Q. (Mr. BALDWIN.) When the first-class passengers came out to sleep in the dining-room or social hall they would not bring any blankets to sleep in?

A. First-class passengers?

Q. Yes.

A. I didn't know we had any first-class passengers sleep in there.

Q. None of them came out?

A. I didn't know we had any of them sleeping in the social hall.

Q. That is why you knew they were all steerage?

A. You can tell these fellows, the roll of blankets they use—it is all about the same roll of blankets—these people going up to Alaska to work.

Q. You don't remember particularly?

A. If it had been a saloon passenger he would have the ship's blankets—that is, white blankets with the big blue border on—you could easily tell them—

(Testimony of M. B. Holland.)

and these steerage would not carry those white blankets with them. I never seen any of them.

(Testimony of witness closed.)

Sept. 28, 1908, 3 P. M.

Continued pursuant to adjournment.

Appearances:

IRA A. CAMPBELL, for Petitioner.

WILLIAM MARTIN, for Claimants.

[**Testimony of M. B. Holland, for Petitioner.**]

M. B. HOLLAND, called as a witness on behalf of the petitioner, being first duly sworn, testified as follows:

Q. (Mr. CAMPBELL.) Your name is—

A. M. B. Holland.

Q. Were you on board the steamer “Santa Clara” on the voyage leaving Seward on or about the 6th day of October, 1906, bound for Seattle?

A. Yes, sir.

Q. How did you happen to be on board of her?

A. I was coming down on business from Seward—business in the east.

Q. Were you working on the boat?

A. No, sir.

Q. A passenger? A. A passenger.

Q. What was your business at that time?

A. General storekeeper of the Alaska Central Railroad.

Q. Where was your office?

A. Seward.

(Testimony of M. B. Holland.)

Q. What was the general nature of your business as such storekeeper?

A. Well, it was a little out of the usual—railroad storekeeper, but we had—did all our own business. We contracted nothing outside. We handled our own men and everything, and in the position I handled the freighting and operation of all the camps, in addition to purchasing stores.

Q. What do you mean by saying you handled the operation of the camps?

A. Well, the location and construction and the feeding of the men, hiring the help—that is, cooks and waiters.

Q. Did you supervise the furnishing of the meals to the men? A. Yes, sir.

A. What kind of weather, Mr. Holland, did you have coming down on the “Santa Clara”?

A. Well, leaving Seward—that is en route on the voyage?

Q. Yes, sir.

A. Leaving Seward we had such bad weather that—we had a house on the forward deck of the boat—it was so rough we was afraid something might happen to that. We had to turn back into Seward and wait until the next morning. The next morning it was very rough weather from there into Prince William Sound; after we left Cape Hinchinbrook we had very nasty weather until we got into Icy Straits—I say nasty weather—it was not so much of a wind or dangerous as it was a deep roll, as I remember it. It was a pretty long while ago.

(Testimony of M. B. Holland.)

Q. Had you ever made that trip before?

A. Yes, sir, several times.

Q. How did the weather compare with the weather usually encountered on that run?

A. I should think, take it on an average, about as fair weather as we have—that is, fair average weather—deep sea roll—land swells—on that particular waters—northern waters around Kayak.

Q. Did the ship take any water upon her at all?

A. On two or three occasions she took water over her bow.

Q. Did you observe whether the rolling of the ship had any effect upon any of the steerage passengers or not?

A. I don't. When she rolls I am pretty busy myself and I expect—

Q. Were you down in the steerage at all?

A. Yes, sir.

Q. Were any steerage passengers seasick so far as you know?

A. Why, I think they were. Quite a number of them sick.

Q. Did you see any of them vomiting on—

A. No.

Q. Did you see any vomit on the deck of the steerage?

A. On the deck?

Q. Yes?

A. No, not where I was.

Q. Did you have occasion, or did you while on board the steamer coming down, visit the steerage at all?

(Testimony of M. B. Holland.)

A. Why, I had occasion to go through it en route to the engine-room, but not—

Q. How often were you through the steerage?

A. Once a day.

Q. What time of day was that usually?

A. In the morning.

Q. What time?

A. The first thing in the morning.

Q. What was the condition of the steerage when you saw it in every respect as to cleanliness?

A. Why, I should consider the steerage clean.

Q. Was there any vomit on the floor that you saw? A. No, sir.

Q. Was there slush or slime on the floor that you saw?

A. No, the only time there was any moisture down there was in the morning after they put their hose on it and had cleaning—then the deck would be wet—outside of that—

Q. Do you know what was done to keep the steerage clean?

A. I don't know what the set rule was.

Q. Did you see them cleaning the steerage?

A. Yes, sir.

Q. When were they cleaning it?

A. In the morning when I went down to take a shower-bath is about the time I would meet all that—the cleaning would be going on early in the morning.

Q. What were they doing to clean it?

(Testimony of M. B. Holland.)

A. Quite often they would be using the hose—I don't know how often they used it—and sweeping up and swept the aisles.

Q. Did you visit the galley at all?

A. Yes, sir.

Q. Did you observe any of the preparation for the meals? A. Yes, sir.

Q. I will ask you to state whether or not the meat—did you see them cooking any meat for the steerage? A. Yes, sir.

Q. I will ask you to state whether or not that meat was rotten so that it stunk?

A. No, sir, I don't think so.

Q. Do you know where they kept the meat on board the "Santa Clara"? A. Yes, sir.

Q. Where was it?

A. On the aft end of the main deck where all the passengers were—she has got an auxiliary steering apparatus on the main deck clear aft—the meat was hung on the rafters right there.

Q. Were you back there at all?

A. Yes, sir, go back there to walk on the upper deck—there is a stairs there where the meat was hung—you go up through the meat to get on the deck.

Q. Did you detect any odors showing that the meat was spoiled meat?

A. I put ten years in the packing business with the railroad, and I couldn't see anything wrong with that meat.

Q. Do you know what food was served to the steerage passengers?

(Testimony of M. B. Holland.)

A. No, I don't know the particular food—what the menu was.

Q. I will ask you to state whether or not the steerage passengers were given the free run of the vessel.

A. Well, decidedly so—very much to the disadvantage of the first-class passengers.

Q. Is that customary with vessels on that run?

A. No, not on any vessel.

Q. Where do they confine the steerage passengers?

A. That depends on the ship—forward usually—forward of the house.

Q. Did you see any of the steerage passengers in the smoking-room? A. Yes, sir.

Q. Did you see any of them using the first class toilets? A. Yes, sir.

Q. I will ask you to state whether or not you saw any of the steerage passengers sleeping in the social hall or dining-room?

A. That was too long ago for me to tell—I couldn't remember that. I know they were sleeping there in the dining-room and all around the social hall, there were people, but with that number aboard I couldn't tell whether they were steerage or first class, but there were people sleeping there.

Cross-examination.

Q. (Mr. MARTIN.) When was this trip that you made on this boat?

A. In October, 1906.

Q. When in October?

(Testimony of M. B. Holland.)

A. I think we left Seward on the 5th or 6th. I think we started on the 5th and had to go back and left on the morning of the 6th.

Q. How did you come to be making this examination? A. What examination?

Q. That you speak of here—the condition of the steerage?

A. Well, a man that is handling twelve or fifteen hundred men up in the camp would naturally have a little interest in the work of feeding or question of feeding—it always come to me as a point of interest, being my business.

Q. That was the reason you went down there, was it? A. You mean into the steerage?

Q. Yes.

A. No, sir; I told you I went to take my bath down in the engine-room.

Q. Did you go down there to take your bath?

A. I did in this particular case—there was an exception made of it—not customary.

Q. Every day? A. Yes, sir.

Q. How long were you in the steerage department?

A. Well, if none of the men spoke to me I probably was five minutes—three or four minutes—two minutes—walking from the companionway down to the ladders.

Q. Yes, you just went down the companionway—wasn't through the compartment at all?

A. Yes, sir, went down the companionway—went down through the steerage into the staircase that

(Testimony of M. B. Holland.)

goes into the engine-room, probably half the distance of the ship from the bow—midships.

Q. Did you see any Chinamen there?

A. Yes, sir.

Q. Did you see any Japs?

A. Yes, sir, I suppose—there were Chinamen—I didn't notice particularly.

Q. Did you notice any people lying around there without berths?

A. I don't know whether they had berths or not—they were lying around all over the ship.

Q. You said they were lying around all upstairs?

A. Yes, sir.

Q. Do you know whether it was because they didn't have any berths or not? A. No.

Q. Well, what was your understanding about it?

Mr. CAMPBELL.—We object to the testimony—to what he understood.

Q. What did you hear about it from the officers of the boat at the time why they were doing that?

A. There was some talk before we left Valdes—I don't remember the circumstances now—of the—it was right about the time the "Oregon" had that mishap and everybody was excited—boats mean a good deal there when you get a boat in, running ten or twelve days, and they were all very anxious to go out, and this boat was full—stopped at Uyak and got those men, and Seward and got the railroad laborers off the road, and Latouche, some of the miners, and when they got to Valdes they were pretty well filled up.

(Testimony of M. B. Holland.)

Q. And they sold a great many tickets more than they had berths for, didn't they?

A. I don't know.

Q. They weren't free passengers, were they?

A. I think the conditions that I remember—it is pretty hard to get up and state positively, but I remember the conditions that there was some understanding that when they went aboard the ship there was no berths.

Q. Did you come down on a pass?

A. No, I came down on Railroad transportation—they furnish me the transportation in the business.

Q. This is the same company you do business with up there that runs this boat?

A. No, I do business with both of them.

Q. And you didn't pay your fare down?

A. No, I went to the railroad company—they furnished it.

Q. They got a pass for you?

A. I don't know—they furnished it—they sent me out on business—they gave me transportation.

Q. You were not down there in the night-time to see them lying around in the slush and wet?

Mr. CAMPBELL.—We object to such implications that there was slush and wet; the witness has not testified to that fact.

(Question read.)

A. No.

Q. You slept up in the first-class department?

A. Yes, sir.

Q. How long was the vessel making the trip?

(Testimony of M. B. Holland.)

A. That I don't remember—I think it was some twelve days.

Q. How long was it lying to at sea?

Mr. CAMPBELL.—We object to that as being improper cross-examination; there is no evidence on direct examination of the vessel lying to at sea.

A. No, I was not conscious of the ship lying to at any time—that is laying idle any time after we left port.

Q. You were conscious, however, of one of the boilers being out of use, weren't you?

A. I don't know only by hearsay.

Q. And that it kept the other boiler being pumped from the leakage of water the vessel was taking?

Mr. CAMPBELL.—Same objection.

A. No, from my experience in the engine-room the vessel was taking no water—the indications down there showed no leakage, in their method of telling.

Q. Well, the vessel was leaking on that trip considerably? A. Not to my knowledge.

Mr. CAMPBELL.—I object to the question as assuming a fact not proven.

Q. And the boilers were in a weak and defective condition?

Mr. CAMPBELL.—Same objection.

A. Not to my knowledge.

Q. Well, you have the same knowledge about that that you have about this other stuff you have been testifying to, haven't you?

(Testimony of M. B. Holland.)

A. I say in the other case, the feeding and care of men was a question I am interested in, and I am not an engineer or fireman.

Q. The vessel took a long time to come down—an unusual time?

A. I have been fourteen days on the trip on the “Santa Anna” up there and thought nothing of it.

Q. That was when it was stopping a good many places?

A. We made extra stops coming down—made stops I didn’t make on the “Santa Anna.”

Q. Did you notice the passengers going ashore to get something to eat at Juneau?

A. It is customary on all trips.

Q. All ran ashore, didn’t they?

A. No, sir; the Chinamen didn’t go ashore.

Q. The other people did?

A. Yes, sir, as is nearly always the case.

Q. The restaurants were going all night, weren’t they? A. Not to my knowledge.

Q. Were you down in the steerage department when they were serving the meals?

A. I think I have been there, yes.

Q. Did you eat in the steerage department?

A. No, sir.

Redirect Examination.

Q. (Mr. CAMPBELL.) I will ask you, Mr. Holland, if the steamship company gave you a pass to come down? A. Did they?

Q. Yes.

A. Not to my knowledge, sir; I went to the office—

(Testimony of M. B. Holland.)

Q. Your transportation was secured from the company for whom you were working?

A. Yes, sir, the railroad company—I just simply went up to their office and the treasurer handed me the transportation, as was the case whenever I traveled—how he got it I know nothing about.

Q. Where were the Chinamen quartered that you speak of?

A. Down between decks there, forward on the port side of the ship.

Q. With a bulkhead separating the two departments? A. Yes, sir.

Q. And I will ask you to state whether or not in going from the companionway that you speak of to the engine-room it was necessary or not necessary for you to pass through the entire length of the steerage?

A. Yes—just to the end of the steerage is where you turn to go to the gangplank on the starboard side of the ship.

Recross-examination.

Q. (Mr. MARTIN.) You say there was a bulkhead between the Chinamen and the others?

A. Yes, sir, a bulkhead both ways—

Q. What kind of a bulkhead?

A. I can't tell you what kind of material it was.

Q. Was it closed or just sort of a fencing or grate? A. A closed bulkhead.

Q. Don't you know very well that you can walk right around that either way from the front there—it is not closed at all?

(Testimony of M. B. Holland.)

A. That I can't tell you offhand.

Q. There is just a sort of partition that comes out part way for the purpose of berths or bunks?

A. No, it is a tight bulkhead—it is a midship bulkhead in there.

Q. It only runs part way, doesn't it, through the steerage?

A. It runs up to the hatch, yes, sir.

Q. And all the rest around that is open?

A. The hatch is open, yes, sir.

Q. Free to walk around from one department into the other?

A. I don't know whether you can walk all around or not—you can go through that front bulkhead.

Q. You don't know—you didn't examine?

A. I don't remember.

Q. You haven't a very distinct recollection of anything aboard the ship, have you?

A. Yes, sir.

Q. This transportation that they furnish you was in the nature of a pass, wasn't it?

A. I didn't say so—I don't know anything about what the transportation was.

Q. What did they give you?

Mr. CAMPBELL.—We object to this as immaterial.

A. A green ticket or red ticket—sufficient to take me down.

—Q. It said pass you to Seattle?

(Testimony of J. G. Dillon.)

A. I don't know whether it read pass, it was a regular printed form of ticket of the company—just the same as the rest of the passengers had.

(Testimony of witness closed.)

[Testimony of J. G. Dillon, for Petitioner.]

J. G. DILLON, called as a witness on behalf of the petitioner, being first duly sworn, testified as follows:

Q. (Mr. CAMPBELL.) Your name is—

A. J. G. Dillon.

Q. Were you on board the steamer "Santa Clara" on the voyage leaving Seward on or about October 6th, 1906, for Seattle? A. Yes, sir.

Q. In what capacity?

A. Chief steward.

Q. You had on board fishermen that you had picked up at Uyak?

A. Fishermen came on board.

Q. Do you know of what companies they were employees?

A. The Northwestern Fisheries Company, I believe.

Q. Do you know what company owned the "Santa Clara" at that time?

A. Northwestern Steamship Company.

Q. What time did you leave Seward the first time out?

A. I could not tell you the date, I am sure.

Q. Did you leave Seward more than once?

(Testimony of J. G. Dillon.)

A. Yes, sir, we went there—we had to put back there—I think we left there in the evening and put back two hours after we got outside.

Q. Why?

A. Bad weather.

Q. And you left there again when?

A. We left there again in the morning sometime.

Q. At the time the steamer left Seward what was the condition of her steerage so far as accommodation was concerned?

A. Everybody was—they all had berths—I think there was a half dozen or so empty berths in the steerage at that time.

Q. Where did you go from Seward?

A. We stopped first after leaving Seward at Lattouche.

Q. And then where? A. Then Valdes.

Q. How long a run was it from Seward to Valdes? A. It takes fourteen hours.

Q. Were any complaints made to you by any steerage passengers getting on at Seward that they had no berths before Valdes was reached?

A. No, the majority of them were all drunk when they got on at Seward.

Q. Did you have any difficulty in getting the steerage passengers aboard at Seward?

A. We hauled some aboard with hook-lines and we had to put back after we got away from the dock to get a lot of them aboard.

Q. What condition were they in?

A. They were worse for liquor.

(Testimony of J. G. Dillon.)

Q. What kind of weather did you have from Seward to Valdes?

A. Very bad weather from Seward to Valdes.

Q. Do you recall what time of day you reached Valdes?

A. Oh, I think it was in the morning, nine or ten o'clock.

Q. What, if anything, was done there about taking further or more steerage passengers aboard at Valdes?

A. Got a few more aboard at Latouche—a half dozen or something like that—and when we got in to Valdes—we were to get some soldiers aboard at Fort Liston—and myself and the purser and the captain went up and told the agent we were going to take these soldiers, and we didn't want to take any more passengers aboard at Valdes, but quite a number there had already had their tickets and the boat was about even with the dock—the rail was about even with the wharf—and instead of coming aboard the foot-plank they jumped over the rail; the quartermaster had orders not to let any more aboard—after he found out they got aboard I myself and the purser and all the waiters went through the steerage and all over the ship and told the passengers if any of them hadn't berths now was the time to get ashore and have their money refunded to them; instead of that, they all stayed aboard.

Q. Did any steerage passengers getting on at Valdes give you any reason for not desiring to secure a refund of the money?

(Testimony of J. G. Dillon.)

A. They were all anxious to get out because not another boat coming in there for ten or fifteen days—some of them made the remark that they didn't care, they would hang on a hook to get to Seattle.

Q. Is it customary on those Southwestern Alaska runs to furnish steerage passengers with blankets and bedding?

A. No, do not furnish them with anything but sacking bottom standees.

Q. What was the condition of the steerage?

A. The same.

Q. What kind of beds were given them?

A. Just sacking bottom.

Q. Any bedclothing of any sort? A. No.

Q. What is sacking bottom made of?

A. Canvas.

Q. What is it stretched on?

A. On what you call stretchers—two poles—they are an inch square I think it is.

Q. What kind of weather did you have after leaving Valdes?

A. Pretty bad weather after getting outside of Cape Hinchinbrook.

Q. How was the steerage ventilated?

A. She had ports—I forget how many on each side—and she had a hatch—we had the hatch off whenever we could take it off in the morning and it would be off probably an hour and some steerage passengers would go up and put it down again.

Q. Was the weather such after leaving Valdes that you were able to keep the hatch open?

(Testimony of J. G. Dillon.)

A. No, there was sometimes we had to keep the hatch closed—it was open most of the time though.

Q. Was the weather such that you could keep the ports open?

A. There was a day or two we had to keep the ports closed; otherwise they were open all the time; those sleeping away from the hatch would want it open and those sleeping near the hatch would want it closed.

Q. What provision was made for the steerage passengers who got on at Valdes without berths?

A. They were simply told that they could sleep wherever they wanted to on the ship.

Q. Did you tell them yourself?

A. I told them, the purser told them, and the steerage steward told them.

Q. Did any of them sleep—

A. Naturally the settees in the dining-room and smoking-room were better than steerage berths and I couldn't say who slept in there but steerage passengers.

Q. Did you see any steerage passengers there with their blankets?

A. Yes, in the social hall and dining-room.

Q. On what did they sleep in the social hall and dining-room?

A. On the settees in the dining-room and plush settees in the social hall.

Q. How are these settees arranged?

A. They run fore and aft, partly around the forward end of the dining-room and partly around the aft end of the social hall.

(Testimony of J. G. Dillon.)

Q. Where is it usual to confine the steerage passengers on board these ships?

Mr. MARTIN.—We object to that. It is simply encumbering the record.

A. On the “Santa Clara” they had no business back of the house—we have what we call the fore-peak—they had no business to go aft of the house at all.

Q. Was there any exception made on this voyage?
A. Yes, sir, they were all over.

Q. By permission of the officers?

A. By permission of everybody—the captain and the chief officers.

Q. Did they use the first-class toilet?

A. Oh, yes.

Q. Were any of the steerage passengers seasick?

A. They were either seasick or sick from the whisky—I don’t know which; they were in pretty bad shape, a good many of them.

Q. Upon what fact do you make that statement?

Mr. MARTIN.—We object to that as irrelevant, incompetent and immaterial and move to strike it out as simply encumbering the record.

Q. State the fact.

A. Heaving up and then laying in the berths all day long.

Q. Did you see any of the steerage passengers vomiting?
A. Oh, yes.

Q. Where were they vomiting?

A. Any place it was convenient for them.

Q. Did you see them vomit on the deck?

(Testimony of J. G. Dillon.)

A. They would vomit right in the dining-room or anywheres else when it came on them like that.

Q. Did you see them vomiting in the steerage on the deck at all?

A. No, I can't say that I did.

Q. Were you in the steerage?

A. I was in the steerage most of the time, you might say—my room is right near the steerage there in the galley.

Q. What, if anything, was done towards keeping the steerage clean?

A. The usual routine—sweeping and scrubbing.

Q. State in detail what was done to keep the steerage clean.

A. The first thing the waiters do is to sweep up the steerage, and then set up the breakfast; after breakfast they sweep down and scrub down.

Q. Did they sweep down and scrub down on this voyage?

A. Yes, sir.

Q. Go ahead; state what they did on this voyage.

A. After lunch is over they sweep down, generally twelve o'clock, and also after supper.

Q. Was anything else done to keep the steerage clean on this particular voyage?

A. Yes; a fellow had some dogs and the boys would take the dogs up on deck and those people that owned them would go up and bring them down; they kept them down in the steerage most of the time—some of these passengers would object to them and the boys would take them up and when they would go away they would go and bring them down again.

(Testimony of J. G. Dillon.)

Q. State whether or not the steerage deck was washed down at all.

A. Oh, yes; washed down several times with the hose—got the sailors and the mate down with a hose; in fact the passengers were so unruly it was hard to get them out of their berths—laying in their berths all day long, and those in the berths would object to the hose on account of getting their baggage wet.

Q. I will ask you whether or not it is true that the vomit from the steerage passengers was allowed to remain upon the deck until the vessel was within one day of Seattle?

A. No, that is never done with no ship—it is impossible to do that.

Q. Did they do it on this voyage?

A. No, sir.

Q. Did you see any vomit that was left on the deck and tracked around?

A. No. I have a little steerage steward that has been at that business on the eastern coast and this coast I think about twenty-five or thirty years, a fully experienced man, a hard worker, and he kept the ship in good shape.

Q. What meals did you serve to the steerage passengers? A. Breakfast, dinner and supper.

Q. What did you serve them for breakfast?

A. Breakfast they always have steak, mush—

Q. What did they have on this voyage?

A. I could not remember the exact things they had, but they had beefsteak for breakfast every morning—one morning beefsteak and pork, the next

(Testimony of J. G. Dillon.)

morning beefsteak and mutton, the next morning beefsteak and ham, besides potatoes, mush and milk, bread and butter and coffee.

Q. What did you give them for lunch?

A. Give them roast beef for lunch, besides stew called mulligan stew, made of meat and potatoes and onions and carrots and turnips.

Q. What else did you give them for lunch, if anything?

A. Generally try to give them pie or pudding—gave them pudding oftener this time on account of being a big crowd—gave them rice pudding and sago pudding, besides stewed fruit.

Q. What did you give them at night?

A. At night gave them a supper consisting of fried meats, fish about three or four times a week, and bread of course, naturally, and cake and stewed fruit—we keep that on the table all the time. They would have that the three meals.

Q. How many settings did it require to feed these steerage passengers?

A. I think we had three for the steerage passengers and the fourth for the soldiers.

Q. Were the soldiers fed the same kind of food as the steerage?

A. The same—they were on the last end.

Q. I will ask you whether or not it was true that the food which was served at the second setting of the table was what was left over from the first?

A. No, there was nothing left over—they were laboring men and they had an awful appetite. After

(Testimony of J. G. Dillon.)

they had eaten we *would washing* the dishes and everything, and set up again, and the boys went back to the galley and filled the dishes up with fresh food out of the galley.

Q. I will ask you whether or not it is true that the meat you gave them was rotten and stunk?

A. The meat we got at Juneau was not probably over five days old and the meat we got at Valdes was probably fifteen days old.

Q. Did you serve them meat purchased at Valdes?

A. Yes, sir; the meat we got at Valdes we served them that about two days after we left Juneau.

Q. Did you serve them any meat purchased in Juneau? A. Yes, sir.

Q. State whether or not you were at any time out of provisions or short of provisions on this voyage coming down. A. No.

Q. I will ask you to state whether or not the food which was given the steerage passengers was any other than the usual customary fare given steerage passengers on these vessels.

A. It was generally a little better, because about that time we were feeding the passengers a little better than the other ships, on account of the "Portland" and "Berths" was running up there.

Q. By reason of competition?

A. We were only supposed to give steerage passengers one kind of meat at a meal—one time there we gave them three different kinds—after leaving Juneau I gave them three or four boxes of apples

(Testimony of J. G. Dillon.)

and oranges—they practically consumed all my fresh fruit and everything like that.

Q. How was this steerage laid off?

A. It is just the forward end of the main deck with a partition running fore and aft from the hatch and the engine-room bulkhead, and from the end of the partition where it comes to the hatch I couldn't tell you, I think it is about twelve feet, the hatch is—you can walk around from one side to the other.

Q. Where were the Chinamen and Japanese?

A. They were on the port side.

Q. Did they mingle with the white passengers?

A. No, they wouldn't allow them over there at all.

Q. Were the Chinamen and Japanese furnished the same food as the white men?

A. They got the same thing—the Chinamen waited on themselves most of the time.

Q. Did they cook their own food forward and around the hatch?

A. No, they didn't cook anything at all—there was two Chinamen foremen that helped these boys out—in fact there was a fellow there, a German, that was cooking at the cannery, and I told him, "You take charge of that side," because he had been with these Chinamen and Japs during the fishing season—of course I knew he would know how to handle those fellows—and when they would go back to the galley these two Chinamen would go with them and get the food and bring it forward.

(Testimony of J. G. Dillon.)

Cross-examination.

Q. (Mr. MARTIN.) How many did you have in the steerage on that trip?

A. I could not tell you now for sure.

Q. Don't you remember how many soldiers came aboard?

A. I think something around forty, I think.

Q. Do you remember how many fishermen came aboard?

A. No, I don't.

Q. The soldiers didn't have tickets, did they?

A. That I couldn't say.

Q. Nor did the fishermen have tickets?

A. That I couldn't tell you.

Q. Do you remember how many fishermen there were?

A. No, I don't.

Q. Do you remember how many Chinamen?

A. No, I think there was close onto a hundred Chinese and Japs together.

Q. You testified once before in the case in the Superior Court, didn't you?

A. Yes, sir.

Q. I ask you if you didn't answer this question as follows: "Q. What was the condition of the steerage passengers with reference to seasickness?"

A. I was kept busy from about eight o'clock in the morning until three the next morning—in fact, I didn't get to bed until late—from the time I left I never had my clothes off. I couldn't say who the men were, but there was an awful crowd of passengers." Is that correct?

A. That was quite a crowd for us because we hadn't been carrying such a crowd as that—we had,

(Testimony of J. G. Dillon.)

I suppose, three hundred and fifty passengers, I suppose, altogether.

Q. Why did they tell the steerage passengers that they could sleep around in the smoking-room and other places?

A. There was the big fishermen there and he would have his baggage in one standee and he slept in the other and his boots in the other, and those fellows had been drinking—they had some money given them when they left the cannery, and when they got to Seward they went up to the saloon and all got full, and when they come down they started fighting and “Big Barney” he was the leader.

Q. Did they practically drive the other steerage passengers out?

A. They were the boss of the steerage.

Q. The fishermen?

A. The fishermen; so the other fellows came back and said, “Here, steward, that big fellow always jumps in my place. I had a bunk there last night, but another fellow has got it now.” I said, “Go in the dining-room, go in the social hall, go anywhere you want”; in fact, we generally set a lunch table in the night-time—the half of the time we couldn’t set up the table when those fellows would get in there, because they wouldn’t change their clothes.

Q. That was the fisherman?

A. Some of those fellows.

Q. So that the odor was pretty bad down there?

A. Some of them fellows’ feet was pretty bad; one of those fellows had on a khahi suit and he done

(Testimony of J. G. Dillon.)

his business and never took off his pants and came back for a drink and I never smelled anything like it in my life.

Q. Was he a fisherman?

A. No, he was a miner; it is a fact those men up there don't wash themselves.

Q. They had a great many more passengers than they had accommodations for, didn't they?

A. No, if we could have mixed them all together we would have been all right, but we couldn't put any white men there on the port side with the Chinamen and Japs.

Q. You couldn't put them on the port side?

A. We made a place especially for them fellows.

Q. You didn't have any more room for them in the steerage than that?

A. There was all the room around the hatch in the forward—there was not any standees there at all.

Q. There was about thirty-six soldiers—where were they?

A. They were all there.

Q. Steerage, weren't they?

A. Steerage, yes—that is aft steerage.

Q. And there was about forty of the white fishermen?

A. I couldn't say how many there was—if we wanted to mix the white passengers up with the soldiers we could have put a good many back where they were, but we had three different classes of people, besides the cabin.

Q. You knew when you took on the other passengers that you were overloaded then, didn't you?

(Testimony of J. G. Dillon.)

Mr. CAMPBELL.—What passengers do you refer to by other passengers?

Mr. MARTIN.—Besides the soldiers and the Chinamen and the fishermen?

A. No, the way I understood the purser the ship was allowed so many—I think three hundred and fifty or sixty—we didn't have that many—we were allowed a great many more. The idea was not to put any more down in the steerage on account of carrying the Chinamen and Japanese.

Q. When you left Valdes and took passengers on there you knew you didn't have berths for them?

A. No, you couldn't tell—as I say, one man would be keeping three bunks and another man two and you couldn't tell much about it.

Q. That is just the way they did, was it?

A. They generally run the thing to suit themselves.

(Testimony of witness closed.)

Continued to a date to be agreed upon between the respective parties.

[Testimony of L. J. Schage, for Petitioner.]

Sept. 30, 1908, 3 o'clock P. M.

Continued pursuant to adjournment.

Appearances:

IRA A. CAMPBELL, for Petitioner.

WILLIAM MARTIN, for Claimants.

L. J. SCHAGE, called as a witness on behalf of the petitioner, being first duly sworn, testified as follows:

Q. (Mr. CAMPBELL.) Your name is L. J. Schage?
A. L. J. Schage.

(Testimony of L. J. Schage.)

Q. Were you master of the steamer "Santa Clara" on the voyage leaving Seward on or about the 6th day of October, 1906, bound for Seattle?

A. I was.

Q. What time of day did you leave Seward?

A. Left in the morning. I can't exactly remember the time now when we did leave.

Q. Did you leave—how many times did you leave?

A. Seven or eight o'clock; something like that.

Q. How many times did you leave?

A. Twice.

Q. How did you happen to leave twice?

A. I went outside and it was blowing hard and I returned and discharged some horses that I had on deck—it was so rough—the man that owned the horses asked me to put them ashore again, and I was afraid it would kill the horses, so I went back and put them ashore.

Q. Did you have any difficulty in getting steerage passengers aboard at the time you left finally?

A. Yes, I left the wharf and then I had to return again. Some of them was uptown—I thought they were all aboard. Some of them was uptown and came down and hollered, and I got some of them aboard with lines.

Q. What condition were they in?

Mr. MARTIN.—I object to that as incompetent, irrelevant and immaterial.

A. They were intoxicated, of course.

Q. Where did you go from Seward?

A. Went to Valdes.

(Testimony of L. J. Schage.)

Q. How long a run is it from Seward to Valdes?

A. About fourteen hours.

Q. Do you know whether or not there was sufficient berths in the steerage for all the passengers who got on at Seward?

A. Yes, sir, there was plenty.

Q. Was any complaint made to you between the time the vessel left Seward and the time she reached Valdes by any of the steerage passengers that they didn't have berths? A. No.

Q. What did you do upon reaching Valdes with respect to taking on other passengers?

A. Well, we found the agent sold some steerage passengers berths there and we didn't have accommodations enough for what he sold, and we offered them their money back again, but there was no one took it.

Q. Who gave this notice you speak of to the passengers? A. The agent there and the purser.

Q. How was the notice given?

A. Why, I don't remember now exactly how the notice was given, but they were told, the people were told to go up to the office and their money would be refunded.

Q. After you left Valdes—

A. It was a notice all through the ship to the same effect.

Q. What reply did the passengers getting on at Valdes make to that?

A. Some of them said they would go anyway—

(Testimony of L. J. Schage.)

Mr. MARTIN.—We object to this testimony as irrelevant, incompetent and immaterial; it doesn't apply to any of the claimants here at all.

Q. Go ahead, Captain.

A. Well, they said they would go anyway if they had to hang up on a nail.

Q. Did they give any reason for their desire to go anyway?

A. No, they said they wanted to get out of town.

Q. Was any complaint made to you after leaving Valdes that steerage passengers didn't have berths? A. No.

Q. Where is it usual to confine steerage passengers—to what portion of the ship?

A. Forward part.

Q. Was there any different rule made in respect to the steerage passengers coming down on this voyage?

A. No; in fact, they had the privilege of the whole ship this time, because we were crowded.

Q. What kind of weather did you encounter after leaving Valdes?

A. We had very rough weather—delayed the ship a good deal on account of rough weather; everybody was sick on board the ship.

Q. Was any complaint made to you about the character of the food or the quantity of the food that was given to the steerage passengers?

A. There was one man come up and said that he didn't get enough to eat.

Q. What did you do?

(Testimony of L. J. Schage.)

A. I immediately called the Steward up and asked him, says I, "How is this? There is a man says he didn't get enough to eat." He says, "There is all the grub he wanted—the boys bring it from the galley—there was lots of grub down there." Says I, "You take this man down there and see that he gets plenty to eat and don't let me hear any more of that." I told the man, "If you have any further complaint to make you come to me and I will see that you are all right." I never heard any more about it—that is the only complaint I heard.

Q. Were you down in the steerage at all?

A. Yes, I was down in the steerage several times.

Q. What condition were the steerage passengers in?

A. While we had that rough weather the steerage was pretty nasty, because they would lay down in the berth and throw up on the deck and you couldn't keep it clean.

Q. What, if anything, was done to keep the steerage clean?

A. Done everything possible to do so. They told the mate to get out of there—didn't want him down there to clean the place up.

Q. What did you do toward keeping the steerage clean?

A. Swept it up and mopped it up all we could—they had their baggage, some of them their bundles, laying underneath their berths and you couldn't put the hose down there to do anything with it until you

(Testimony of L. J. Schage.)

got into better weather, and then everything was washed out.

Q. Where was this better weather you speak of?

A. After we got on the inside of Cape Spencer.

Q. On the inside passage you refer to?

A. On the inside passage.

Q. I will ask you whether it is true or not true that the ship was in a leaky and unseaworthy condition as charged? A. No, she was not leaky.

Q. I will ask you whether it took you any longer to come from Seward to Seattle by the way of the inside passage than is usually required for the "Santa Clara" to make that trip over that route?

A. You mean through the inside passage?

Q. Yes, sir.

A. Why, sometimes we have better weather and we can make a better passage; that time we had pretty rough weather until we got down to Cape Spencer, and it delayed us a good deal.

Q. What time of day did you leave Cape Spencer?

A. I should judge about three or four o'clock in the morning—it was dark and foggy at the time we reached there.

Q. What did you do?

A. We laid off the land outside until it cleared up.

Q. Where did you proceed—Icy Straits?

A. In the Icy Straits; there is no one goes into Icy Straits in the night anyway.

Q. Why not? A. On account of ice.

(Testimony of L. J. Schage.)

Cross-examination.

Q. (Mr. MARTIN.) Did you give this notice to the passengers yourself?

A. I told the purser to give the notice to them.

Q. That is all you know about it?

A. About—that is all I know about it that they were offered their money back.

Q. I am asking you if it is all you know about it; you just gave that order to the purser?

A. Yes, I am not the purser of the ship—I am the master of the ship.

Q. And you gave that order to him?

A. Yes, sir.

Q. And that dismissed it from your hands?

A. Yes, sir, and the agent he gave the order.

Q. What is that?

A. We have got an agent in Valdes, and he is in charge of the ship when we are in port.

Q. What was the agent's name at Valdes at that time?

A. I think it was Bush—I don't remember.

Q. He was agent for the ship at Valdes?

A. Agent for the company, yes, sir.

Q. Northwestern Steamship Company?

A. Northwestern Steamship Company.

Q. And when the ship is in port he has charge, has he?

A. Yes, we refer everything to the agent, just the same as Mr. Burns down here.

Q. Just the same as you would if you were in port here—refer it to the owners?

(Testimony of L. J. Schage.)

A. Refer it to the owners—Mr. Burns, he is the manager.

Q. And you say he sold more tickets than you had space for?

A. Well, that is what they claimed, that he sold more tickets than what we had room for, and he offered the purchase money back again—what had been bought—he didn't know how many tickets were sold in Seward and consequently there was more tickets sold than berths for, so he offered the money back again; they said no, they would hang on a nail, they would go on the ship anyway.

Q. Did you see him offer any claimants the money back?

A. No, I didn't stay in the office; my place is on board the ship, not in the office.

Q. You don't know whether they notified any of these claimants whether they could get their money back or not, personally?

A. No, I don't.

Q. All you know is what orders you gave?

A. Yes, sir.

Q. You testified in this case before, didn't you, Captain?

A. Yes.

Mr. CAMPBELL.—In this case in this court or in the Superior Court?

Mr. MARTIN.—In the Superior Court.

Q. And I will read you this testimony which you gave in the direct examination: “Q. (Mr. Campbell.) Did you go down in the steerage?

A. Yes, sir. Q. Did you see anybody sick? A. They were all sick—I wasn't down there very often in that

(Testimony of L. J. Schage.)

trip, because the mate told me they were all sick and drunk down there and I didn't care to go down very often." That is the correct testimony, is it, you gave in the other case, it is not, Captain?

MR. CAMPBELL.—We object to the reading of that question and the testimony because there is no evidence in this suit that there was any other prosecution or other suit in any other court.

A. That is all right.

Q. That is correct, is it not?

A. That is all right; I don't remember saying they were all drunk on the trip, but I say pretty near all aboard when we left Seward.

Q. It was the fishermen, wasn't it?

A. I don't know who it was.

Q. That is, the crowd described by the witness here yesterday, was those fishermen who were drinking and big husky fellows and holding their own down there in the steerage?

MR. CAMPBELL.—I object to the question as leading and assuming a fact that has not been proved; and furthermore that the Captain has no knowledge of what was testified to yesterday.

Q. Well, I am referring to those fishermen; they were a kind of rough crowd, weren't they?

A. Why, I don't know—when a man gets a little full he is generally rough—it is an actual thing.

Q. And those fishermen were pretty near all full?

A. Not all—there was some of them were; yes.

Q. Some of them were very full?

(Testimony of L. J. Schage.)

A. But they had never interfered with the rest of the people that was down there—never heard a complaint about that.

Q. The testimony yesterday was by your own witness that they kept the other fellows away from the table?

(No response.)

Redirect Examination.

Q. (Mr. CAMPBELL.) Were you down there when they were fighting at the table, Captain?

A. No, I was not.

Q. Do you know whether or not the agent sold any tickets after the “Santa Clara” got into port at Valdes?

A. I don’t know—I don’t think he did; I am pretty sure he didn’t.

Q. And you reported to him the fact that the berths were all filled up at Seward?

A. Yes, sir.

Recross-examination.

Q. (Mr. MARTIN.) Captain, how many berths in the steerage did the “Santa Clara” carry or have on that trip?

A. I don’t remember now how many berths there were down there—this is so long ago that I have forgotten all about it.

Q. I will ask you is it not a fact, Captain, that your vessel is given a license to carry so many first-class and so many second-class and so many steerage?

A. Yes.

(Testimony of L. J. Schage.)

Q. Now, I will ask you if it is not a fact that when you don't have the steerage full and have the freight you stow that in the steerage department?

A. Yes, sir.

Q. I will ask you is it not a fact—

A. You mean when we don't have passengers?

Q. Yes—that you build bunks up there in the steerage for the accommodation of passengers when you have them?

A. We have standees put up there.

Q. A carpenter puts those up?

A. Most anybody can put them up, because they are all fitted and all you have to do is to put them up.

Q. How many of those standees did the vessel have already fitted when she left Valdes on that trip?

A. I can't remember now how many she did have.

Q. I will ask you if it is not a fact that you are given a license, what you call a simply blanket license to carry so many passengers, and in case emergencies arise or occasion arises that you get a great number of passengers then you go on and put in places for them to sleep?

A. No, we always have a certain number we are allowed to carry and we dare not exceed that number.

Q. You are allowed to carry a certain number of passengers, but you do not have berths for that number of passengers—don't have them aboard the ship?

A. Yes, we put those standees up whenever we require them—that is all they have in any steerage quarters.

(Testimony of L. J. Schage.)

Q. You have material there to put them up with, have you?

A. Why there—that is all they have in any ship—standees.

Q. But it is a fact that they are given the license to carry a certain number of passengers, say, for instance, steerage, and in case you get more passengers than you have berths for, then you have your carpenter build them, don't you?

A. No, we always have berths for the number that we are allowed to carry as a general thing.

Q. I will ask you if it is not a fact, Captain, that the vessels running on this route and Alaska have not what is called a blanket certificate so that they can carry more passengers in case the occasion arises to do so than what they have got berths for?

Mr. CAMPBELL.—We object to that as being immaterial as to what licenses other ships have; the only question before the Court is as to whether or not the “Santa Clara” exceeded the number of passengers she was allowed to carry by her certificate of inspection.

A. Never heard of such a thing.

Q. Is that your answer?

A. That is my answer.

Q. Well, they may have done—they may do so and you know it and still not have heard it.

Mr. CAMPBELL.—I object to it as immaterial and incompetent on the ground that such a question is absurd.

A. How can I answer that question?

(Testimony of L. J. Schage.)

Q. I will ask then if it is not a fact that the "Santa Clara" had at this time a certificate to carry more steerage passengers that she had—

A. A license for you mean?

Q. A license for, yes—to carry more steerage passengers than she had berths for? A. No.

Q. What is that?

A. She did from Valdes—that is the reason we wanted to pay the people their money back again, because we told them we didn't have no more berths for them, and they said they would hang up on a nail—they would sleep anywheres—they said they were going down in the ship if they had to hang on a nail.

Q. Who said that? A. Several of them.

Q. Name one of them?

A. I don't go among the passengers to ask their names—the purser attends to that business.

Q. Is that what the purser told you?

A. That is what I heard reported around the ship—the purser told me that was the fact.

Mr. MARTIN.—That is all. We move to strike it out as hearsay.

Redirect Examination.

Q. (Mr. CAMPBELL.) When you go into port at Valdes you go to the agent there and report that the ship is in? A. Yes, sir.

Q. And then he shows you what freight there is to be taken?

A. Well, generally the purser attends to that business.

(Testimony of L. J. Schage.)

Q. And gives you the passenger list—the purser?

A. The purser attends to that.

Q. But he doesn't order you to leave port and where to go? A. Yes, sir.

Q. You get your orders from Seattle for your voyage?

A. Yes, sir, but there may be different orders, and consequently the agent gives me my orders—there may be a dispatch there from below.

Q. He simply transmits the orders from the head office in Seattle? A. Yes, sir.

Q. Now, Captain, I will ask you whether it is customary on board these ships, whether it is customary on the “Santa Clara” on that run at that season of the year to furnish passengers with blankets or bedding? A. No.

(Testimony of witness closed.)

[Testimony of J. W. Hare, for Petitioner.]

J. W. HARE, called as a witness on behalf of the petitioner, being first duly sworn, testified as follows:

Q. Your name is— A. J. W. Hare.

Q. Were you chief engineer on the “Santa Clara” on the voyage leaving Seward for Seattle on or about the 6th of October, 1906? A. Yes, sir.

Q. Did you have any difficulty with her boilers on the voyage down? A. Yes.

Q. Will you state fully what it was?

A. We had a tube that gave out—one four-inch tube—what we call dry tube in the boiler—upper tube.

(Testimony of J. W. Hare.)

Q. What was the cause of this tube giving out?

A. The tube passes through the baffle-plates and the baffle-plates had chafed until they gave out.

Q. Was this defect such as was discoverable before you left Seattle?

A. No, sir, impossible to get at it without tearing the casing out.

Q. What did you do toward repairing it?

A. Tore it out and put in a new one.

Q. How long did that take you?

A. About twelve hours to take out the tube and get up steam again and ready to hook—to use the boiler.

Q. Was the ship hove to during this period of twelve hours?

A. She was steaming under one boiler.

Q. What speed was she making?

A. I don't know—probably four or five miles an hour.

Q. What did you do after you had repaired this tube?

A. I put the other boiler in and went ahead—run to Seattle at the usual speed.

Q. What did you do upon reaching Cape Spencer—what did the ship do upon reaching Cape Spencer?

A. The ship stood off and on during the night until daylight, until the fog cleared up.

Q. I will ask you, Mr. Hare, whether or not it is true that the ship was leaking and in an unseaworthy condition?

(Testimony of J. W. Hare.)

A. No, sir, the ship was not leaking or in an unseaworthy condition—only just a seep that any wooden ship leaks a little bit.

Q. I will ask you whether or not it is true that you had your pumps working for throwing out the water that was coming in by reason of the leakage?

A. No, sir, no extra pump was put on her, there was a small bilge pump on the engine all the time and that was the only pump used on the engine all the way home.

Q. How does the water get into that bilge?

A. We have what is called circulating water which runs through the back columns for keeping the engines cool, there is another pipe that circulates water through the thrust-bearing—there is an oil tank underneath it and it circulates through the oil tank for the purpose of keeping thrust cool; and there is a drain to the condensers, making five streams that always run into the bilge through a half inch pipe under a very light pressure.

Q. Now, how was the water taken from the ship?

A. By this bilge-pump that works on the engine—what we call onto the cross-head of the engine—works from a beam.

Cross-examination.

Q. (Mr. MARTIN.) You say that just one of these tubes was defective?

A. Yes, sir, just one.

Q. In one boiler? A. In one boiler.

A. One boiler.

(Testimony of J. W. Hare.)

Q. Did you have steam on the other boiler all the time?
A. All the time.

Q. It was working all the time?

A. All the time; yes, sir.

Q. And did you have to put in just the one tube?

A. The one tube, yes, sir—a very difficult place to get at.

Q. How were the other tubes?

A. Good—I just retubed the boiler about two months before—any that showed defect at all.

Q. How long have you been on that vessel?

A. Three years now on the 20th of this month.

Q. You were on her this trip when she turned back from the Straits?

Mr. CAMPBELL.—We object to that as immaterial.

A. I was.

Q. Why did she turn back?

Mr. CAMPBELL.—Same objection—having no bearing on the issues in this case.

A. We turned back because she was leaking through the sleeves from the main discharge to the circulator and to the main sea-cock.

Q. Leaking through the sleeves?

A. Lead sleeves, to the main discharge, to the condenser and the main sea-cock—can make you a diagram and explain it to you.

Q. Explain it a little more fully to the Court.

A. The sleeves are pieces of lead pipe that pass through the bottom of a ship for the purpose of tak-

(Testimony of J. W. Hare.)

ing water to the circulating pump or other pumps, and also for discharging it over the side.

Q. Where else was she leaking on that trip?

A. She was leaking a little in several places—her *corking* was leaking a little.

Q. There was a new sort of timber or keel put in the vessel in that trip, wasn't there?

A. Yes, sir.

Mr. CAMPBELL.—We object to all this line of testimony as incompetent, irrelevant and immaterial.

Q. That was after this voyage out of which this suit arose, wasn't it? A. Yes, sir.

Q. The next voyage, wasn't it?

A. Not those timbers, no—we put some timbers on her side immediately after that voyage.

Q. What was the purpose of those timbers?

A. To generally strengthen the ship.

Q. Now, this timber that they put in the keel was a long large timber, wasn't it?

Mr. CAMPBELL.—Same objection.

A. Do you understand when it was put in?

Q. Yes.

A. That keel you are talking about was put in this last winter just before we make this voyage that you asked me about turning back.

Q. Yes, that is right; that was a new keel, wasn't it?

A. No, sir, it was not—a new sister kelson.

Q. How large a timber was that?

A. 24 by 24—two of them.

(Testimony of J. W. Hare.)

Q. How long?

A. 116 feet long, and two 20 by 20, 75 feet long.

Q. What was the purpose of those timbers?

A. To get a good foundation for the engine and to strengthen the ship up.

Q. Then the ship was in a somewhat weak condition, wasn't she?

A. She wasn't as strong as she is now, but the ship was perfectly safe—like painting a house—it needs painting occasionally.

Q. This was a little more than giving it a dose of paint, wasn't it?

A. It strengthens her, yes.

Q. The reason it was done was because the ship was in a weak condition?

A. Certainly, because they would not have put it in.

Q. How old is that ship?

A. Eight years old; according to the certificate of inspection she was built at Everett of wood in the year 1900.

Q. There was considerable of complaint and disturbance amongst the passengers coming down, wasn't there?

A. No, sir, very little.

Q. You didn't notice a lot of them being drunk then?

A. Oh, the boys were full, but then we are so used to that that we don't notice a little thing like that.

(Testimony of J. W. Hare.)

Redirect Examination.

Q. (Mr. CAMPBELL.) Mr. Hare, the sister kelsons that were put in that you refer to, I will ask you to state whether it is usual or unusual to put such strengthening timbers in a wooden vessel after she get long to the age of eight or nine years.

A. Well, it depends a great deal upon the construction of the ship in the first place.

Q. Do they or do they not put such additional repairs and strengthening timbers in ships that are getting old?

A. Well, I have seen a number of them put in.

Q. That was out in a year and a half after this voyage?

A. Yes, sir, that was put in I guess—

Mr. MARTIN.—The next season.

A. —the next year, a little over a year after—a little over a year—we made the voyage in October, and I think we put these in in January the year following.

Q. That is the second January following?

A. The second January following—fifteen months or something like that.

Q. That would be January, 1908—this last January?

A. Yes, sir.

Q. I will ask you to state whether or not the ship was at the time of this voyage in an unseaworthy condition?

A. She was not.

(Testimony of witness closed.)

Mr. CAMPBELL.—I will offer in evidence now the certified copy of certificate of inspection, which counsel has called for.

(Testimony of F. C. Avery.)

(Certified copy of certificate of inspection offered in evidence marked Petitioner's Exhibit "H," and annexed hereto and returned and filed herewith.)

[Testimony of F. C. Avery, for Claimant (Recalled in Rebuttal).]

F. C. AVERY, recalled as a witness in rebuttal for claimants, testified as follows:

Q. (Mr. MARTIN.) Mr. Avery, you have testified here before, didn't you? A. Yes, sir.

Q. Some of the witnesses for the steamship company have testified that the purser and agent went around amongst the passengers at Valdes and told those that didn't have berths to go ashore and get their money back; did you hear any such announcement as that? A. I didn't; no, sir.

Q. You were aboard the ship, were you?

A. Yes, sir.

Q. If that had been circulated and announced you would have heard it?

Mr. CAMPBELL.—We object to it as being leading and calling for a conclusion of the witness.

A. Yes, sir.

Cross-examination.

Q. (Mr. CAMPBELL.) You got on at Valdes?

A. Valdes; yes, sir.

Q. What time did the ship sail?

A. Somewhere about ten o'clock in the morning.

Q. You went aboard her just before she sailed?

A. About a half hour.

(Witness excused.)

[**Testimony of Emil Stank, for Claimants (Recalled in Rebuttal).**]

EMIL STANK, recalled as a witness in rebuttal for claimants, testified as follows:

Q. (Mr. MARTIN.) Some of the witnesses for the steamship company have testified that the purser and the agent went around and announced to the passengers at Valdes that those who didn't have berths could go ashore and get their money back; did you ever hear such announcement as that?

A. No, sir.

Q. You were on the vessel at the time at Valdes?

A. Yes, sir.

Cross-examination.

Q. (Mr. CAMPBELL.) Did you get on at Seward? A. At Valdes.

Q. You got on about a half hour before the vessel sailed too?

A. No, I came at that vessel at midnight—the vessel come in at midnight—it was sometime from Monday to Tuesday.

Q. When did you go aboard—just before the vessel sailed?

A. No, I was on the same at midnight.

Q. You went aboard at midnight?

A. Yes, sir.

Q. You slept aboard that night?

A. Yes, sir.

Redirect Examination.

Q. (Mr. MARTIN.) How long were you aboard the vessel at Valdes before she sailed?

(Testimony of Emil Stank.)

A. I never was on the vessel when they got breakfast.

Mr. MARTIN.—Read the question again.

(Question read.)

A. Three or four hours, anyway.

Q. Three or four hours?

A. I don't know exactly.

Q. You went aboard as soon as she came to the dock, did you?

A. Yes, sir; I was up to town and I heard that whistle when that boat came in.

Q. Did you see any of these claimants here that have filed claims here drunk and disorderly on that vessel?

Mr. CAMPBELL.—We object to that question as being uncertain and no identification as to who these claimants are that counsel refers to.

A. No, I never seen them.

Q. You met these passengers at my office and on the boat that sued the vessel, didn't you?

A. Yes, sir.

Q. And now, did you see any of them disorderly or drunk?

A. No, I never saw them drunk.

Recross-examination.

Q. (Mr. CAMPBELL.) Who took you up to Mr. Martin's office?

A. I was going myself.

Q. How did you happen to go up there?

A. There was a few men come.

(Testimony of Emil Stank.)

Q. Got together on the ship to go up and hire a lawyer?

A. No, not on the same ship—everyone was kicking.

Q. And you all got together and agreed you would go up and hire a lawyer, didn't you?

A. Yes, sir.

Q. Hannofin was the man getting you together; do you know Hannofin? A. I don't know.

Q. He was the man that was sort of leading you—working it? A. He had a paper.

Q. It was this man that had a paper you signed, wasn't it?

A. Yes, sir; it was poor accommodation over there—everybody was kicking, and—

Q. When you went aboard the "Santa Clara" you went down to get a berth, didn't you?

A. Yes, sir.

Q. And you couldn't find any, could you?

A. No, sir.

Q. There wasn't any empty berths there, was there? A. No.

Q. But you didn't go to the purser or captain or steward and complain about it before the vessel left port, did you?

A. I asked the watchman on the boat and he said he would fix it to-morrow morning before leaves.

(Testimony of witness closed.)

[**Testimony of F. C. Avery, for Claimants (Recalled in Rebuttal).**]

F. C. AVERY, recalled as a witness in rebuttal for claimants, testified as follows:

Q. (Mr. MARTIN.) You met the claimants in this action on board the vessel and in my office when they signed up this suit? A. Yes, sir.

Q. Did you see any of these passengers drunk or disorderly on the boat? A. No, sir.

Q. I will ask you if it is not a fact that the fishermen monopolized the steerage and were drunk and disorderly on the trip?

Mr. CAMPBELL.—I object to that as being leading and immaterial.

A. Yes, sir.

Q. I will ask you if any effort was made by the officers of the vessel to restrain these fishermen and make them be decent and orderly?

A. Not that I seen or heard of.

Cross-examination.

Q. (Mr. CAMPBELL.) Most of the time you were up on the upper deck, weren't you, Mr. Avery?

A. I was up a good bit of the time, yes, sir.

Q. So you don't know what took place while you were on the upper deck? A. No.

Q. Can you give me the names of all these claimants that you are acquainted with?

A. Not all of them, no, sir.

Q. You also signed this paper on board the ship that Mr. Stank has just referred to?

(Testimony of F. C. Avery.)

A. Yes, sir.

Q. And Mr. Hannofin was the man that was working up this case, wasn't he?

A. I don't remember that name.

Q. There was one man that had the paper and was sort of working up the lawsuit?

A. Yes, sir.

Redirect Examination.

Q. (Mr. MARTIN.) There was a general complaint there all the time?

A. Yes, sir; all the time.

Q. And this paper he got was to present to the company, was it not? A. Yes, sir.

Mr. CAMPBELL.—We object to that as leading.

Q. I will ask you if it was presented to the company? A. Yes, sir.

Recross-examination.

Q. (Mr. CAMPBELL.) Did you present it yourself?

A. I was in the crowd—we went up to the office all together.

Q. And then this man who got up the paper took you up to Mr. Martin's office? A. No, sir.

Q. How did you happen to go there?

A. I went there myself.

Q. Of your own volition?

A. Yes, sir; I was the one that took the boys up there.

Q. You were the one that took them?

A. Yes, sir.

(Testimony of witness closed.)

[Recital Relative to Respondents' Exhibit "I."]

Counsel for respondents offered in evidence the ship's payroll and agent's and purser's passenger way-bill, which were marked Respondent's Exhibit "I," which is annexed hereto, returned and filed herewith.

Testimony closed.

[Commissioner's Certificate to Testimony, etc.]

United States of America,
Western District of Washington,
Northern Division,—ss.

I, William D. Totten, a Special Commissioner appointed by the foregoing entitled court in the foregoing entitled action, residing at Seattle, in said District, do hereby certify that:

The annexed and foregoing transcript from page 1 to page 247, both inclusive, contains all of the testimony offered by the parties appearing in said cause on the dates therein named. That the said testimony was taken before me and reduced to writing by the Bowman-Bolster-Eaton Co., that firm having been agreed on by proctors for the respective parties, in pursuance of the order and commission issued in said cause.

The above-named witnesses, before examination, were by me duly sworn to testify the truth, the whole truth and nothing but the truth.

Counsel for the respective parties expressly waived the signing by said witnesses of said testimony.

Respondent's Exhibits "A," "B," "C," "D," "E," "F," "I," and Petitioner's Exhibits "G" and "H" are filed and returned herewith.

In witness whereof I have hereunto set my hand this 26th day of Oct. 1908.

W. D. TOTTEN,
Special Commissioner.

SPECIAL COMMISSIONER'S FEES:

6 days' hearing testimony at \$3.00.....	\$18.00
682 folios of testimony at .10.....	68.20
Swearing 12 witnesses at .20.....	2.40
	\$88.60

—have been paid by the respective parties as follows:
By the petitioner, \$43.40; by the respondent, \$44.00

[Endorsed]: Testimony. Filed in the U. S. Dist. Court, Western Dist. of Washington. Oct. 26, 1908. R. M. Hopkins, Clerk. A. N. Moore, Deputy.

[Order of Submission.]

In the District Court of the United States for the Western District of Washington, Northern Division.

IN ADMIRALTY—No. 3658.

In re Petition N. W. S. S. CO., Owner Str. "SANTA CLARA," for Limitation of Liability.

Now, on this day this cause comes on for final hearing; the Court after hearing the argument of respective counsel takes said matter under advisement.

General Order Book, Volume 2, page 36, December 14, 1908.

*United States District Court, Western District of
Washington, Northern Division.*

No. 3658.—Mar. 27, 1909.

In the Matter of the Petition of the NORTHWESTERN STEAMSHIP COMPANY, LTD. (a Corporation), Owner of the Steamer "SANTA CLARA," an American Vessel, for a Limitation of Liability.

Memorandum Decision on the Merits.

This is a suit under the limited liability of statute, in which the owner of the steamship "Santa Clara," claims protection of the Court to the extent of limiting to the appraised value of the vessel, its liabilities for damages claimed on account of the mistreatment of passengers on a voyage from Alaska ports to Seattle; and also contests all claims for such damages.

The appraised value of the "Santa Clara," is more than sufficient to cover all known claims, therefore it is unnecessary to discuss the question whether the owner is entitled to exemption from liability in excess of that value.

In their pleadings the parties who claim damages make charges that the "Santa Clara," was unseaworthy and not supplied with sufficient provisions, nor equipped to carry comfortably and safely the number of passengers received for the voyage, all of which appear to me to be disproved by a fair preponderance of the evidence, except in one particular,

viz.: The vessel did not have berths nor places to sleep for the number of steerage passengers received on board.

A claim is made that the vessel had accommodations for all the passengers received previous to touching at Valdes and that all those who came on board at that place were notified that no berths remained untaken, and that they could go to the company's office and take back the money paid for their tickets. This, I believe, is an afterthought; at any rate, it has not been proved by a preponderance of the evidence and is inconsistent with the fact that the additional passengers were received and carried. The ship was overcrowded; for this there is no legal excuse; and for the discomfort suffered by the steerage passengers, the vessel and its owner is liable.

There is a wide discrepancy in the evidence as to the character and sufficiency of the food served on the voyage and I am unable to determine from consideration of the evidence, whether it was so bad as to constitute a breach of contract.

That the steerage passengers suffered discomfort from the filthy and bad condition of the steerage quarters is well proved. In the steerage there was 90 Chinese and Japanese fishermen, and a number of other foreigners, returning from a fishery where they had been employed during the preceding summer, and a company of United States soldiers. They filled all the space available for the accommodation of steerage passengers. The soldiers were received on board, after the vessel reached Valdes, but they occupied space especially reserved for them, so that

the steerage passengers, other than the fishermen and soldiers, were not provided for. The fishermen were all filthy and offensive in their manners. The Europeans were especially so, being intoxicated and turbulent, and the voyage was rough, and there was a good deal of seasickness. In view of these well-established facts, and of the captain's testimony, it is absurd to expect the Court to believe the testimony of employees on the vessel, tending to prove that the steerage was kept in a condition fit for human habitation. In his testimony, the captain makes the remarkable admission that conditions in the steerage were so bad that he did not care to go there, and only looked into it a few times.

One of the contestants has recovered a judgment in the Superior Court of the State of Washington, for the County of King, in the sum of \$300.00. That amount of money is not exorbitant compensation for physical suffering caused by a breach of a passenger contract, and the Court adopts the estimate of the jury as the measure of damages to be awarded to each of the contestants.

C. H. HANFORD,
Judge.

[Endorsed]: Memorandum Decision on the Merits. Filed in the U. S. District Court, Western Dist. of Washington. Mar. 27, 1909. R. M. Hopkins, Clerk. W. D. Covington, Deputy.

In the District Court of the United States for the Western District of Washington, Northern Division.

IN ADMIRALTY—No. 3658.

In the Matter of the Petition of the NORTHWESTERN STEAMSHIP COMPANY, LTD. (a Corporation), Owner of the Steamer "SANTA CLARA," an American Vessel, for Limitation of Liability.

Memorandum of Costs and Disbursements.

DISBURSEMENTS.

Clerk's fees, including 2% on amount of judgment with interest, \$11,395.00....	\$ 235.80
Marshal's fees, 1% on 1st \$500 and 1/2% on rest	59.47
Attorney's proctor's—fees, docket fee for each contestant, \$20.00.....	660.00
Commissioner's fees.....	44.00
Reporter's fees	68.20
Miscellaneous costs.....	
Costs of suits in Superior Court—Sam Atkinson	114.40
Filing complaints of 25 contestants in Superior Court at \$4.00 each.....	100.00
Proctor's deposition fee examining 14 at \$2.50	35.00
Witness fees:	
F. C. Avery, 2 days and 28 miles travel..	2.90
Hade Road, 2 days and 100 miles travel.	8.00

326 *The Northwestern Steamship Company, Ltd.,*

Emil Stank, 1 day and 2 miles travel...	1.60
A. O. Johnson, 1 day and 2 miles travel..	1.60
Patrick Redmond, 1 day and 2 miles travel	1.60
Wm. Lundberg, 1 day and 2 miles travel.	1.60
<hr/>	
Total.....	\$1,334.17

United States of America,
Western District of Washington,—ss.

William Martin, being duly sworn, deposes and says: That he is the proctor for the contestants in the above-entitled cause; and as such has knowledge of the facts herein set forth; that the items in the above memorandum contained are correct to the best of this deponent's knowledge and belief, and that the said disbursements have been necessarily incurred in the said cause and that the services charged herein have been actually and necessarily performed as herein stated.

WM. MARTIN.

Subscribed and sworn to before me, this 7th day of April, 1909.

[Seal]

THOMAS SOUTAR,

Notary Public for State of Wash.

To the Petitioner, the American Surety Company & Messrs. Bogle & Spooner and Ira A. Campbell, Their Proctors:

You will please take notice that on Monday, the 12th day of April, 1909, at the hour of 9:30 o'clock A. M., application will be made to the clerk of said court to have the within memorandum of costs and

disbursements taxed pursuant to the rule of said court, in such case made and provided.

WM. MARTIN,

Proctor for Contestants.

Due service of the within and foregoing memorandum of costs and disbursements and notice of the taxation thereof by the receipt of a true copy thereof, hereby is admitted in behalf of all parties entitled to such service by the Rules of Court, this 7th of April, 1909.

IRA A. CAMPBELL.

[Endorsed]: Memorandum of Costs and Disbursements. Filed in the U. S. District Court. Western Dist. of Washington. Apr. 8, 1909. R. M. Hopkins, Clerk. W. D. Covington, Deputy.

In the District Court of the United States for the Western District of Washington, Northern Division.

No. 3658.

In the Matter of the Petition of the NORTHWESTERN STEAMSHIP COMPANY, LTD. (a Corporation), Owner of the Steamer "SANTA CLARA," an American Vessel for Limitation of Liability.

Petitioner's Objections to Proposed Cost-bill.

To the Hon. C. H. HANFORD, Judge of the Above-entitled Court:

Your petitioner, Northwestern Steamship Company, Ltd., respectfully objects to the Cost-bill of claimants, served and filed in the above cause, in

the following particulars and for the following reasons:

1st. Petitioner objects to that item of said Cost-bill which includes as clerk's fees the sum of \$235, as 2% on \$11,395, specified as amount of judgment with interest, for the reason and on the grounds that no decree in said amount, nor at all, has been entered in this proceeding.

2d. Petitioner objects to the item of \$59.47, included in said cost-bill as 1% on the first \$500 and one-half of one per cent on \$10,895, specified as the amount of judgment with interests in said proceeding, on the ground and for the reason that no decree for the sum of \$11,395, nor at all, has been entered in this proceeding.

3d. Petitioner objects to the item of \$660, included in said cost-bill as a \$20 docket fee for each of thirty-three claimants, on the ground and for the reason that no decree has been entered in this proceeding. Secondly, that but six of said claimants appeared in this proceeding, and proved their claims, as required by law. An allowance of \$20 docket fee for each of said claimants is against the law and justice.

4th. Petitioner objects to the item of \$44.00, included in said cost-bill as commissioner's fee, on the ground and for the reason that said fee is excessive and that no voucher showing the payment of said fee has been filed with this Court.

5th. Petitioner objects to the item of \$68.20, as reporter's fees, on the ground and for the reason that said fees are excessive and no voucher showing

payment of said sum has been filed with this Court and are not taxable under the rules of this Court.

6th. Petitioner objects to the item of \$114.40 included in said cost-bill as cost of suit of Sam Atkinson in the Superior Court of King County, on the ground and for the reason, that the costs in said suit as taxed by the Superior Court of King County amounted to the sum of \$113.80.

7th. Petitioner objects to the item of \$100, included in said cost-bill as moneys disbursed in filing complaints of 25 contestants in the Superior Court, on the ground and for the reason that none of said claimants obtained any judgment in said causes in said Superior Court, and are not taxable under the law in this proceeding; and for the further reason, that no proper voucher showing such disbursement has been filed with this Court.

8th. Petitioner objects to the item of \$35.00, included in said cost-bill as proctor's deposition fee for examining fourteen witnesses, on the ground and for the reason that but twelve witnesses were called and examined in this proceeding.

BOGLE & SPOONER, and

IRA A. CAMPBELL,

Proctors for Petitioner.

State of Washington,
County of King,—ss.

Ira A. Campbell, being first duly sworn, on oath, deposes and says: That he is one of the proctors for petitioner herein; that he has read the foregoing ob-

jections, knows the contents thereof, and believes the same to be true and well founded in law.

IRA A. CAMPBELL.

Subscribed and sworn to before me this 9th day of April, 1909.

[Seal]

A. B. SHAY,

Notary Public in and for the State of Washington,
Residing at Seattle, Wash.

[Endorsed]: Petitioner's Objections to Proposed Cost-bill. Filed in the U. S. District Court, Western Dist. of Washington. Apr. 10, 1909. R. M. Hopkins, Clerk. W. D. Covington, Deputy.

*In the District Court of the United States for the
Western District of Washington, Northern Di-
vision.*

IN ADMIRALTY—No. 3658.

In the Matter of the Petition of the NORTHWEST-
ERN STEAMSHIP COMPANY, LTD. (a
Corporation), Owner of the Steamer "SANTA
CLARA," an American Vessel, for Limita-
tion of Liability.

**Order [Requiring Petitioner to Pay Moneys Into
Registry of Court].**

This cause coming on for hearing on the applica-
tion of the contestants for an order requiring the
above-named petitioner and its stipulator, the Amer-
ican Surety Company, of New York, to pay into the
registry of this court, an amount sufficient to pay the
claims of the contestants allowed by this Court in its

written opinion filed herein on the 27th day of March, 1909, wherein this Court granted to and allowed the claim of each of the contestants in the sum of three hundred dollars (\$300.00), amounting in all the sum of nine thousand nine hundred dollars (\$9,900.00), with interest at the rate of six per cent (6%) per annum from the 20th day of October, 1906, together with contestants' costs herein to be taxed, and the Court being advised in the premises, grants the application.

It is therefore ordered, considered and decreed, that the petitioner, the Northwestern Steamship Company, Ltd., a corporation, and the American Surety Company of New York, stipulators herein, be and they are hereby required and ordered to pay into the registry of this court, within ten (10) days from date hereof, the sum of nine thousand nine hundred dollars (\$9,900.00), together with the costs herein as taxed, in favor of each of the contestants.

Done in open court this 10th day of April, A. D. 1909.

C. H. HANFORD,
Judge.

[Endorsed]: Order. Filed in the U. S. District Court, Western Dist. of Washington. April 12, 1909. R. M. Hopkins, Clerk. W. D. Covington, Deputy.

In the District Court of the United States for the Western District of Washington, Northern Division.

IN ADMIRALTY—No. 3658.

In the Matter of the Petition of the NORTHWESTERN STEAMSHIP COMPANY, LTD. (a Corporation), Owner of the Steamer "SANTA CLARA," an American Vessel for Limitation of Liability.

Amended Memorandum of Costs and Disbursements.

DISBURSEMENTS.

Clerk's fees, including 2% on am't of judgment with interest, \$11,395.00.....	\$ 235.80
Marshal's fees, 1% on 1st \$500 & 1/2% on rest	59.47
Proctor's fees, docket fee for each contestant, \$20.....	660.00
Commissioner's fees	44.00
Reporter's fees	68.20
Miscellaneous costs, costs of suits in Superior Court (Sam Atkinson).....	114.40
Filing complaints of 25 contestants in Superior Court at \$4.00 each.....	100.00
Proctor's deposition fee, examining 14 at \$2.50	35.00
Witness fees:	
F. C. Avery, 2 days and 28 miles.....	2.90
Hade Roark, 2 days and 100 miles travel.	8.00
Emil Stank, 1 day and 2 miles travel....	1.60

A. O. Johnson, 1 day and 2 miles travel.	1.60
Patrick Redmond, 1 day and 2 miles travel.	1.60
Wm. Lundberg, 1 day and 2 miles travel.	1.60
Cost of taking deposition of Wm. R. Pierce in case of Pierce v. N. W. S. S. Co. in Sup. Crt.	23.50
Cost of taking deposition of A. Artal in case of Artal v. N. W. S. S. Co., in Superior Court	17.20
	Total \$1374.87

Taxed _____, 1909.

Clerk.

United States of America,
Western District of Washington,—ss.

William Martin, being first duly sworn, deposes and says: That he is the proctor for the contestants in the above-entitled cause; and as such has knowledge of the facts herein set forth; that the items in the above-amended memorandum contained are correct to the best of this deponent's knowledge and belief, and that the said disbursements have been necessarily incurred in said cause, and that the services charged herein have been actually and necessarily performed as herein stated.

WM. MARTIN.

Subscribed and sworn to before me this 12 day of April, A. D. 1909.

[Seal] THOMAS SOUTAR,
Notary Public in and for the State of Washington,
Residing at Seattle.

Copy of within Amended Cost Bill received this 12th day of April, 1909.

IRA A. CAMPBELL,
Proctor for Petitioner.

[Endorsed]: Amended Memorandum of Costs and Disbursements. Filed in the U. S. District Court, Western District of Washington. April 12, 1909. R. M. Hopkins, Clerk. W. D. Covington, Deputy.

In the District Court of the United States for the Western District of Washington, Northern Division.

No. 3658.

In the Matter of the Petition of the NORTHWESTERN STEAMSHIP COMPANY, LTD. (a Corporation), Owner of the Steamer "SANTA CLARA," an American Vessel, for Limitation of Liability.

Notice [of Motion for Order Requiring Payment of Moneys into Registry of Court].

To the Above-named Petitioner and Its Proctors, Messrs. Bogle & Spooner and Ira A. Campbell:

You will please take notice that the contestants will apply to the Honorable C. H. Hanford, Judge, at Chambers in said court at the hour of 9:30 A. M. on Tuesday, the 13th day of April, A. D. 1909, to sign the order, a copy of which is herewith served upon you, requiring the petitioner, and its stipulator, the American Surety Company of New York, to pay into the Registry of the Court a sufficient amount to

pay the allowance made to each of the contestants herein, with their costs.

WM. MARTIN,
Proctor for Contestants.

[Endorsed]: Notice. Filed in the U. S. District Court, Western Dist. of Washington. April 12, 1909. R. M. Hopkins, Clerk. W. D. Covington, Deputy.

*In the United States District Court for the Western
District of Washington, Northern Division.*

IN ADMIRALTY—No. 3658.

In the Matter of the Petition of the NORTHWESTERN STEAMSHIP COMPANY, LTD. (a Corporation), Owner of the Steamer "SANTA CLARA," an American Vessel, for Limitation of Liability.

Decree.

This cause having been duly submitted upon the pleadings, claims filed by contestants, admissions and evidence, and the Court having considered the same, and having made and filed its opinion herein, on the 27th day of March, 1909, awarding and assessing damages in favor of the contestants in the sum of Three Hundred Dollars (\$300.00) each; and a petition having been filed herein by the petitioner, the Northwestern Steamship Company, Ltd., a corporation, owner of the steamer "Santa Clara," an American vessel, asking for a limitation of its liability arising out of, or occasioned by that certain voyage of the steamer "Santa Clara," leaving Uyak, Alaska,

on October 6th, 1906, and terminating at Seattle, Washington, on October 21st, 1906, to the value of said vessel, and the freight pending at the termination of said voyage, and that an appraisement be made fixing the value of said vessel and the freight pending at the termination of said voyage, and that a monition issue commanding and citing all persons claiming any loss, damage or injury arising out of, or occasioned by said voyage of said vessel, to appear before a commissioner to be appointed by this Court, and make due proof of their respective claims; and asking for an injunction enjoining and restraining the contestants from prosecuting their several actions in the Superior Court of King County, State of Washington, against the petitioner, and asking the Court to fix and assess the amount of the claims made by and to be allowed the contestants, and the petitioner having given a stipulation in the sum of Seventy-five Thousand Seven Hundred and Seventy-four and 15/100 Dollars (\$75,774.15) for the payment of all claims allowed by the Court and to pay such amount into the Registry of the Court as shall satisfy the claims allowed by the Court, when so ordered by the Court; and the Court having issued said monition and caused said appraisement to be made, and issued said injunction and assessed the amount of claims in favor of each of the contestants upon their claims filed herein against said petitioner, and having made and entered its order herein, directing that the petitioner and its stipulator, the American Surety Company of New York pay into the Registry of this Court, the sum of Nine Thou-

sand Nine Hundred Dollars (\$9,900.00), the amount allowed contestants herein, together with their costs herein, within ten (10) days from the 10th day of April, 1909, and said petitioner, the Northwestern Steamship Company, Ltd., a corporation and said American Surety Company of New York, having failed to comply with said order, and the Court being advised in the premises, it is on the request of the contestants ordered that final judgment be entered herein against said petitioner and its stipulator for the amounts fixed and allowed to each of the contestants, together with their costs herein.

It is therefore ordered, considered and decreed that each of the contestants do have and recover of and from the Northwestern Steamship Company, Ltd., a corporation, and the American Surety Company of New York, its stipulator, the amounts set opposite their respective names, together with interest thereon at six per cent (6%) per annum from the 21st day of April, 1909, and their costs, to wit:

C. Ransom	\$300.00
John Hannafin	300.00
A. Artal	300.00
Gust Anderson	300.00
Erik Johnson	300.00
Sam Atkinson	300.00
William Lundberg	300.00
J. L. Porter	300.00
Tom Berg	300.00
Jacob Osterholm	300.00
J. L. Sage	300.00

John Borland	300.00
J. R. Moreland	300.00
Louis Martin	300.00
Matt Mattson	300.00
William R. Pierce	300.00
H. A. Broaded	300.00
P. McCormick	300.00
Chas. Kelly	300.00
Frank Hannigan	300.00
Roaslie Papes	300.00
T. Vandenenk	300.00
F. C. Avery	300.00
A. O. Johnson	300.00
John Sullivan	300.00
J. Abohden	300.00
Emil Lindquist	300.00
Frank Smith	300.00
Hade Roark	300.00
G. W. Bell	300.00
Robak Powell	300.00
Pat Redmond	300.00
Emil Stank	742.75

It is further ordered, considered and decreed that execution issue against the goods, lands, chattels and property of every character and kind of the petitioner, the Northwestern Steamship Company, Ltd., a corporation, and its stipulator, the American Surety Company of New York, for said amounts decreed to be due each of the contestants, and the costs of this action taxed by the Clerk at \$742.75, and the Court hereby retains jurisdiction of this action for the purpose of enforcing this decree.

Done in open Court this 21st day of April, A. D. 1909.

C. H. HANFORD,
Judge.

Copy of within decree received this 19th day of April, 1909.

IRA A. CAMPBELL,
Proctor for Petitioner.

[Endorsed]: Decree. Filed in the U. S. District Court, Western District of Washington. Apr. 21, 1909. R. M. Hopkins, Clerk.

In the District Court of the United States for the Western District of Washington, Northern Division.

IN ADMIRALTY—No. 3658.

In the Matter of the Petition of the NORTHWESTERN STEAMSHIP COMPANY, LTD. (a Corporation), Owner of the Steamer "SANTA CLARA," an American Vessel, for Limitation of Liability.

Affidavit [of E. E. Richards.]

State of Washington,
County of King,—ss.

E. E. Richards being first duly sworn, on oath deposes and says: That he is a member of the stenographic firm of Bowman-Bolster-Eaton Co., which firm reported the testimony in the above-entitled case taken before the Hon. W. D. Totten, Commissioner.

That the fees charged in said case by said firm and paid by William Martin, Proctor for Claimants in the above-entitled cause, were as follows:

To stenographers' fees for two days' attendance at hearing of claimants' testimony.	\$ 6.00
To transcript of testimony offered by claimants represented by Mr. Martin, 374 folios at 10c per folio.	37.40
To carbon copies of all testimony offered before the Commissioner by both petitioner and respondent, 682 folios at 10c per folio.	68.20
	\$111.60

That of said moneys paid by Mr. Martin the item of \$37.40 was for the original of the testimony taken by him on behalf of the claimants represented by him.

That said item of \$68.20 was for carbon copies of all the testimony furnished Mr. Martin.

That petitioner in said cause paid the sum of a hundred and eleven dollars as follows:

To stenographer's fees for four days' attendance at hearing of petitioner's testimony	\$ 12.00
To transcript of testimony offered by petitioners 308 folios at 10c per fo.	30.80
To carbon copy of all testimony offered before Commissioner by petitioner and claimants, 682 folios at 10c per folio.	68.20
	\$111.00

That of said moneys paid by Mr. Campbell on behalf of petitioners \$30.80 was for the original of the testimony taken by him on behalf of petitioner and the item of \$68.20 was for carbon copies of all testimony furnished Mr. Campbell.

That said stenographic firm therefore received the sum of \$222.60 in said cause and of this sum paid said Commissioner as his proportionate share of said fees the sum of \$60.00.

E. E. RICHARDS.

Subscribed and sworn to before me this 20th day of April, A. D. 1909.

[Seal]

CHAS. B. EATON,

Notary Public in and for the State of Washington,
Residing at Seattle.

[Endorsed]: Affidavit in Support of Objections to Cost Bill. Filed in the U. S. District Court, Western Dist. of Washington. April 21, 1909. R. M. Hopkins, Clerk.

*In the District Court of the United States for the
Western District of Washington, Northern Division.*

IN ADMIRALTY—No. 3658.

In the Matter of the Petition of the NORTHWESTERN STEAMSHIP COMPANY, LTD. (a Corporation), Owner of the Steamer "SANTA CLARA," an American Vessel, for Limitation of Liability.

Clerk's Certificate of Taxation of Costs.

This matter having been heretofore submitted to me for taxation of costs;

William Martin, Esq., appearing for contestants and Ira A. Campbell, Esq., appearing for petitioner, upon due consideration of the cost-bill and amended cost-bill of contestants and petitioner's objection to proposed cost-bill and affidavit of E. E. Richards in support of objections to cost-bill and amended cost-bill.

I tax and allow the full amount of cost of contestants as set forth in their amended memorandum of costs and disbursements.

In allowing the cost-bill in full I am not unmindful of the items for commission to Clerk and commission to Marshal, and while they are in their nature costs in anticipation of final decree, I believe they should be taxed and allowed at this time in order to ascertain to a certainty the amount of money to be paid into the Registry of the Court pursuant to the order of the Court in that particular heretofore made and entered, irrespective of any final decree being entered in this action.

To the foregoing taxation of costs the proctor for petitioner excepts and objects, which said exception and objection are now noted and allowed. Proctor for petitioner also gives notice of appeal in this matter to the Court from the said above taxation of costs, which said appeal is allowed.

Dated at Seattle, Wash., April 21, 1909.

R. M. HOPKINS,
Clerk.

[Endorsed]: Clerk's Certificate of Taxation of Costs. Filed in the U. S. District Court, Western Dist. of Washington. Apr. 21, 1909. R. M. Hopkins, Clerk.

In the District Court of the United States for the Western District of Washington, Northern Division.

IN ADMIRALTY—No. 3658.

In the Matter of the Petition of the NORTHWESTERN STEAMSHIP COMPANY, LTD. (a Corporation), Owner of the Steamer "SANTA CLARA," an American Vessel for Limitation of Liability.

Memorandum of Costs and Disbursements Taxed by the Court.

This cause coming on for hearing on appeal from the Clerk's order taxing the costs, and upon the petitioner's objections to the costs taxed in the amended memorandum of costs by the Clerk, and the Court being advised in the premises, retaxes the costs in favor of the contestants, as follows:

Clerk's fees, incurred to date.....	\$ 7.50
Marshal's fees 1% on the 1st \$500 and 1/2%	
on remainder of judgment including costs	58.85
Proctor's docket fee, each contestant \$10...	330.00
Commissioner's fees	44.00
Costs incurred in Superior Court prior to filing of petition for Limitation of Liability herein (Sam Atkinson)	114.40

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Costs of filing complaints by 25 of the other contestants at \$4.00 each in Superior Court.....	100.00
Proctor's deposition fee, examining 12 witnesses at \$2.50 each	30.00
Witness' fees:	
F. C. Avery, 2 days and 28 miles.....	2.90
Hade Roark, 2 days and 100 miles travel.	8.00
Emil Stank, 1 day and 2 miles travel.....	1.60
A. O. Johnson, 1 day and 2 miles travel....	1.60
Patrick Redmond, 1 day and 2 miles travel	1.60
Wm. Lundberg, 1 day and two miles travel	1.60
Deposition of Wm. Pierce.....	23.50
Deposition of A. Artal.....	17.20

Amounting in all to the sum of seven hundred and forty-two and 75/100 (\$742.75), which said sum shall be included in the judgment in this action, and draw interest at the same rate as the judgment from date hereof.

Done in open Court this 27th day of April, A. D. 1909.

C. H. HANFORD,
Judge.

[Endorsed]: Order Taxing Costs. Filed in the U. S. District Court, Western Dist. of Washington, Apr. 27, 1909. R. M. Hopkins, Clerk.

*In the District Court of the United States for the
Western District of Washington, Northern Divi-
sion.*

IN ADMIRALTY—No. 3658.

In the Matter of the Petition of the NORTHWEST-
ERN STEAMSHIP COMPANY, LTD. (a
Corporation), Owner of the Steamer "SANTA
CLARA," an American Vessel, for Limitation
of Liability.

Notice of Appeal.

To C. Ranson, John Hannafin, A. Artal, Gust Ander-
son, Erik Johnson, Sam Atkinson, William
Lundberg, J. L. Porter, Tom Berg, Jacob Oster-
holm, J. L. Sage, John Borland, J. R. Moreland,
Louis Martin, Matt Mattson, William R. Pierce,
H. A. Broaded, P. McCormick, Chas. Kelly,
Frank Hannigan, Roaslie Papes, T. Vandenenk,
F. C. Avery, A. O. Johnson, John Sullivan, J.
Abohden, Emil Lindquist, Frank Smith, Hade
Roark, G. W. Bell, Robak Powell, Pat Redmond
and Emil Stank; and to William Martin and
Julius L. Baldwin, their Proctors;

You, and each of you, will please take notice, that
the Northwestern Steamship Company, Limited, a
corporation, petitioner above named, hereby appeals
from the final decree of the above-entitled court, in
the above-entitled cause, in favor of each of said
claimants, and against the Northwestern Steamship
Company, Limited, petitioner, in the sum of three

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hundred dollars (\$300.00) with costs, to each of said claimants, and from each and every part thereof awarding said claimants the sum of three hundred dollars (\$300.00) each, to the United States Circuit Court of Appeals for the Ninth Circuit.

BOGLE & SPOONER,

IRA A. CAMPBELL,

Proctors for Petitioner, Northwestern Steamship
Company, Ltd.

United States of America,
Western District of Washington,—ss.

Due service of the within Notice of Appeal, after the filing of the same in the office of the Clerk of the above-entitled court, is hereby admitted by the Proctors for claimants, this ——— day of May, 1909.

_____,
Proctors for the Above-named Claimants.

[Endorsed]: Notice of Appeal. Filed in the U. S. District Court, Western Dist. of Washington. May 20, 1909. R. M. Hopkins, Clerk.

*In the District Court of the United States for the
Western District of Washington, Northern Divi-
sion.*

IN ADMIRALTY—No. 3658.

In the Matter of the Petition of the NORTHWEST-
ERN STEAMSHIP COMPANY, LTD. (a
Corporation), Owner of the Steamer "Santa
Clara," an American Vessel, for Limitation of
Liability.

Petition for Allowance of Appeal and Order Allowing Same.

The Northwestern Steamship Company, Limited, petitioner, feeling itself aggrieved by the final decree of the District Court of the United States for the Western District of Washington, Northern Division, made and entered in the above-entitled action, on the 21st day of April, 1909, in favor of C. Ransom, John Hannafin, A. Artal, Gust Anderson, Erik Johnson, Sam Atkinson, William Lundberg, J. L. Porter, Tom Berg, Jacob Osterholm, J. L. Sage, John Borland, J. R. Moreland, Louis Martin, Matt Mattson, William R. Pierce, H. A. Broaded, P. McCormick, Chas. Kelly, Frank Hannigan, Roaslie Papes, T. Vandenenk, F. C. Avery, A. O. Johnson, John Sullivan, J. Abohden, Emil Lindquist, Frank Smith, Hade Roark, G. W. Bell, Robak Powell, Pat Redmond and Emil Stank, claimants, for the sum of three hundred dollars (\$300.00) to each of said claimants, together with costs, does appeal from said decree, and each and every part thereof, awarding said sum of three hundred dollars (\$300.00) to each of said claimants, to the United States Circuit Court of Appeals for the Ninth Circuit, upon the grounds set forth in its assignment of errors, heretofore filed by it in the above-entitled court, and it prays that its appeal may be allowed.

BOGLE & SPOONER,
IRA A. CAMPBELL,

Proctors for Petitioner, Northwestern Steamship
Company, Ltd.

Order Allowing Appeal.

On this 20th day of May, 1909, the above appeal is allowed, and the bond of said petitioner, Northwestern Steamship Company, Ltd., in order to operate as a supersedeas bond, is fixed in the sum of fifteen thousand dollars (\$15,000.00), and on the filing of such bond, with good and sufficient surety thereon, all proceedings on the decree shall be stayed until the final hearing and determination of the appeal.

The appeal and supersedeas bond may be in one bond in the sum of fifteen thousand two hundred and fifty dollars (\$15,250) and in such amount shall operate as an appeal and supersedeas bond.

C. H. HANFORD,

Judge of the District Court of the United States, for
the Western District of Washington, Northern
Division.

Dated May 20, 1909.

[Endorsed]: Petition for Allowance of Appeal and Order Allowing Same. Filed in the U. S. District Court, Western Dist. of Washington. May 20, 1909. R. M. Hopkins, Clerk.

In the District Court of the United States for the Western District of Washington, Northern Division.

IN ADMIRALTY—No. 3658.

In the Matter of the Petition of the NORTHWESTERN STEAMSHIP COMPANY, LTD. (a Corporation), Owner of the Steamer "SANTA CLARA," an American Vessel, for Limitation of Liability.

Assignment of Errors.

Now comes the Northwestern Steamship Company, Limited, the above-named petitioner, and assigns errors in the rulings of the Court in the above-entitled proceedings, and in its proceedings, orders, decisions and decree rendered therein, as follows, to wit:

1. The District Court erred in holding that the petitioner's steamer "Santa Clara" did not have accommodations for all the passengers received previous to touching at Valdes.

2. The District Court erred in holding that petitioner did not notify all those who came on board at Valdes that no berths remained untaken, and that they could go to the Company's office and take back the money paid for their tickets.

3. The District Court erred in holding that the evidence of notice to all persons who came on board at Valdes that no berths remained untaken and that they could go to the company's office and take their money back was an after thought, and that it was not

proved by a preponderance of the evidence, and that it was inconsistent with the fact that additional passengers were received and carried.

4. The District Court erred in holding that the ship was overcrowded.

5. The District Court erred in holding that the vessel and its owner is liable for the discomfort suffered by the steerage passengers.

6. The District Court erred in holding that the steerage passengers suffered discomfort from filthy and bad condition of the steerage quarters.

7. The District Court erred in holding that the steerage quarters were in a filthy and bad condition.

8. The District Court erred in holding that the petitioner was liable for the condition of the steerage quarters.

9. The District Court erred in holding that the Chinese and Japanese fishermen, and other foreigners, returning from a fishery, and a company of United States soldiers, filled all of the space available for the accommodation of steerage passengers.

10. The District Court erred in holding that the steerage passengers, other than the fishermen and soldiers, were not provided for.

11. The District Court erred in holding that petitioner was liable for filthiness and offensiveness in the manners of the fishermen.

12. The District Court erred in holding that it did not believe the testimony of the employees on the vessel proving, or tending to prove, that the steerage was kept in a condition fit for human habitation.

13. The District Court erred in holding that the steerage was not kept in a condition fit for human habitation.

14. The District Court erred in holding that petitioner was responsible for the personal conduct of the steerage passengers, except in so far as it was reasonably able to control the same.

15. The District Court erred in holding that each of the claimants suffered physical injury.

16. The District Court erred in holding that each of the claimants suffered any substantial damage.

17. The District Court erred in holding that there was a breach of passenger contract with each of the claimants.

18. The District Court erred in holding that the sum of \$300 awarded by a jury in the Superior Court of the State of Washington for King County was not exorbitant compensation for physical suffering caused to the plaintiff in said action by breach of a passenger contract.

19. The District Court erred in adopting the estimate of the jury in said action in the Superior Court of the State of Washington for King County as the measure of damages to each of the contestants.

20. The District Court erred in holding that any of the claimants suffered any damage.

21. The District Court erred in holding that each and any of the claimants were entitled to any damage by reason of any acts of petitioner or its agents or employees.

22. The District Court erred in not holding that the claimants and each of them had not filed in said

proceeding any proper claims as required by the Admiralty Rules of the Supreme Court of the United States, and the Admiralty Rules of the United States Court of the Western District of Washington.

23. The District Court erred in rendering and entering judgment and decree against the petitioner, Northwestern Steamship Company, Limited, and its stipulator, American Surety Company of New York, in favor of C. Ransom in the sum of \$300 and costs and interest.

24. The District Court erred in rendering and entering judgment and decree against the petitioner, Northwestern Steamship Company, Limited, and its stipulator, American Surety Company, of New York, in favor John Hannafin in the sum of \$300 and costs and interest.

25. The District Court erred in rendering and entering judgment and decree against the petitioner, Northwestern Steamship Company, Limited, and its stipulator, American Surety Company of New York, in favor of A. Artal in the sum of \$300 and costs and interest.

26. The District Court erred in rendering and entering judgment and decree against the petitioner, Northwestern Steamship Company, Limited, and its stipulator, American Surety Company of New York, in favor of Gust Anderson in the sum of \$300 and costs and interest.

27. The District Court erred in rendering and entering judgment and decree against the petitioner, Northwestern Steamship Company, Limited, and its

stipulator, American Surety Company of New York, in favor of Erik Johnson in the sum of \$300 and costs and interest.

28. The District Court erred in rendering and entering judgment and decree against the petitioner, Northwestern Steamship Company, Limited, and its stipulator, American Surety Company of New York, in favor of Sam Atkinson in the sum of \$300 and costs and interest.

29. The District Court erred in rendering and entering judgment and decree against the petitioner, Northwestern Steamship Company, Limited, and its stipulator, American Surety Company of New York, in favor of William Lundberg, in the sum of \$300 and costs and interest.

30. The District Court erred in rendering and entering judgment and decree against the petitioner, Northwestern Steamship Company, Limited, and its stipulator, American Surety Company of New York, in favor of J. L. Porter in the sum of \$300 and costs and interest.

31. The District Court erred in rendering and entering judgment and decree against the petitioner, Northwestern Steamship Company, Limited, and its stipulator, American Surety Company of New York, in favor of Tom Berg in the sum of \$300 and costs and interest.

32. The District Court erred in rendering and entering judgment and decree against the petitioner, Northwestern Steamship Company, Limited, and its stipulator, American Surety Company of New York,

354 *The Northwestern Steamship Company, Ltd.*,
in favor of Jacob Osterholm in the sum of \$300 and
costs and interest.

33. The District Court erred in rendering and entering judgment and decree against the petitioner, Northwestern Steamship Company, Limited, and its stipulator, American Surety Company of New York, in favor of J. L. Sage in the sum of \$300 and costs and interest.

34. The District Court erred in rendering and entering judgment and decree against the petitioner, Northwestern Steamship Company, Limited, and its stipulator, American Surety Company of New York, in favor of John Borland in the sum of \$300 and costs and interest.

35. The District Court erred in rendering and entering judgment and decree against the petitioner, Northwestern Steamship Company, Limited, and its stipulator, American Surety Company of New York, in favor of J. R. Moreland in the sum of \$300 and costs and interest.

36. The District Court erred in rendering and entering judgment and decree against the petitioner, Northwestern Steamship Company, Limited, and its stipulator, American Surety Company of New York, in favor of Louis Martin in the sum of \$300 and costs and interest.

37. The District Court erred in rendering and entering judgment and decree against the petitioner, Northwestern Steamship Company, Limited, and its stipulator, American Surety Company of New York, in favor of Matt Mattson in the sum of \$300 and costs and interest.

38. The District Court erred in rendering and entering judgment and decree against the petitioner, Northwestern Steamship Company, Limited, and its stipulator, American Surety Company of New York, in favor of William R. Pierce in the sum of \$300 and costs and interest.

39. The District Court erred in rendering and entering judgment and decree against the petitioner, Northwestern Steamship Company, Limited, and its stipulator, American Surety Company of New York, in favor of H. A. Broaded in the sum of \$300 and costs and interest.

40. The District Court erred in rendering and entering judgment and decree against the petitioner, Northwestern Steamship Company, Limited, and its stipulator, American Surety Company of New York, in favor of P. McCormick in the sum of \$300 and costs and interest.

41. The District Court erred in rendering and entering judgment and decree against the petitioner, Northwestern Steamship Company, Limited, and its stipulator, American Surety Company of New York, in favor of Chas. Kelly in the sum of \$300 and costs and interest.

42. The District Court erred in rendering and entering judgment and decree against the petitioner, Northwestern Steamship Company, Limited, and its stipulator, American Surety Company of New York, in favor of Frank Hannigan in the sum of \$300 and costs and interest.

43. The District Court erred in rendering and entering judgment and decree against the petitioner,

Northwestern Steamship Company, Limited, and its stipulator, American Surety Company of New York, in favor of Roaslie Papes in the sum of \$300 and costs and interest.

44. The District Court erred in rendering and entering judgment and decree against the petitioner, Northwestern Steamship Company, Limited, and its stipulator, American Surety Company of New York, in favor of T. Vandenenk in the sum of \$300 and costs and interest.

45. The District Court erred in rendering and entering judgment and decree against the petitioner, Northwestern Steamship Company, Limited, and its stipulator, American Surety Company of New York, in favor of F. C. Avery in the sum of \$300 and costs and interest.

46. The District Court erred in rendering and entering judgment and decree against the petitioner, Northwestern Steamship Company, Limited, and its stipulator, American Surety Company of New York, in favor of A. C. Johnson in the sum of \$300 and costs and interest.

47. The District Court erred in rendering and entering judgment and decree against the petitioner, Northwestern Steamship Company, Limited, and its stipulator, American Surety Company of New York, in favor of John Sullivan in the sum of \$300 and costs and interest.

48. The District Court erred in rendering and entering judgment and decree against the petitioner, Northwestern Steamship Company, Limited, and its

stipulator, American Surety Company of New York, in favor of J. Abohden in the sum of \$300 and costs and interest.

49. The District Court erred in rendering and entering judgment and decree against the petitioner, Northwestern Steamship Company, Limited, and its stipulator, American Surety Company of New York, in favor of Emil Lindquist, in the sum of \$300 and costs and interest.

50. The District Court erred in rendering and entering judgment and decree against the petitioner, Northwestern Steamship Company, Limited, and its stipulator, American Surety Company of New York, in favor of Frank Smith, in the sum of \$300 and costs and interest.

51. The District Court erred in rendering and entering judgment and decree against the petitioner, Northwestern Steamship Company, Limited, and its stipulator, American Surety Company of New York, in favor of Hade Roark in the sum of \$300 and costs and interest.

52. The District Court erred in rendering and entering judgment and decree against the petitioner, Northwestern Steamship Company, Limited, and its stipulator, American Surety Company of New York, in favor of G. W. Bell, in the sum of \$300 and costs and interest.

53. The District Court erred in rendering and entering judgment and decree against the petitioner, Northwestern Steamship Company, Limited, and its stipulator, American Surety Company of New York,

358 *The Northwestern Steamship Company, Ltd.*,
in favor of Robak Powell, in the sum of \$300 and
costs and interest.

54. The District Court erred in rendering and
entering judgment and decree against the petitioner,
Northwestern Steamship Company, Limited, and its
stipulator, American Surety Company of New York,
in favor of Pat Redmond, in the sum of \$300 and
costs and interest.

55. The District Court erred in rendering and
entering judgment and decree against the petitioner,
Northwestern Steamship Company, Limited, and its
stipulator, American Surety Company of New York,
in favor of Emil Stank, in the sum of \$300 and costs
and interest.

56. The District Court erred in ordering and de-
creeing that execution issue against the goods, lands,
chattels and property of the petitioner and its stip-
ulator, American Surety Company of New York, in
the sum of \$300 and costs and interest in favor of
each of said claimants, or any of them.

57. The District Court erred in taxing any costs
against petitioner, Northwestern Steamship Com-
pany, Limited, and in entering judgment and decree
thereon against petitioner, Northwestern Steamship
Company, Limited, and its stipulator, American
Surety Company of New York.

58. The District Court erred in taxing the sum of
\$10.00 docket fee as costs against petitioner, North-
western Steamship Company, Limited, and in enter-
ing judgment and decree thereon against petitioner
and its said stipulator, in favor of each of said claim-
ants.

59. The District Court erred in taxing as costs against petitioner the sum of \$4.00 costs of filing complaints by 25 contestants at \$4.00 each in the Superior Court of Washington, for King County, and in entering judgment and decree thereon.

60. The District Court erred in ordering and decreeing that the sum of \$742.75 should draw interest.

61. The District Court erred in not dismissing the claims of each of said claimants except the claim of Sam Atkinson.

Wherefore, the said petitioner, Northwestern Steamship Company, Limited, prays the judgment of the United States Circuit Court of Appeals for the Ninth Circuit in the premises, and that the decree appealed from be reversed, and the claims of said claimants dismissed, and that it recover its costs and disbursements, and for such other and further relief as justice may require.

BOGLE & SPOONER,
IRA A. CAMPBELL,

Proctors for Petitioner, Northwestern Steamship
Company, Limited.

[Endorsed]: Assignment of Errors. Filed in the
U. S. District Court, Western Dist. of Washington.
May 20, 1909. R. M. Hopkins, Clerk.

*In the United States District Court for the Western
District of Washington, Northern Division.*

IN ADMIRALTY—No. 3658.

In the Matter of the Petition of the NORTHWEST-
ERN STEAMSHIP COMPANY, LTD. (a
Corporation), Owner of the Steamer "SANTA
CLARA," an American Vessel, for Limitation
of Liability.

Bond on Appeal.

Know All Men by These Presents: That we,
Northwestern Steamship Company, Limited, as
Principal, and National Surety Company, as Surety,
are held and firmly bound unto C. Ransom, John
Hannofin, A. Artal, Gust Anderson, Erik Johnson,
Sam Atkinson, William Lundberg, J. L. Porter, Tom
Berg, Jacob Osterholm, J. L. Sage, John Borland,
J. R. Moreland, Louis Martin, Matt Mattson, Will-
iam R. Pierce, H. A. Broaded, P. McCormick, Chas.
Kelly, Frank Hannigan, Roaslie Papes, T. Vanden-
enk, F. C. Avery, A. O. Johnson, John Sullivan, J.
Abohden, Emil Lindquist, Frank Smith, Hade
Roark, G. W. Bell, Robak Powell, Pat Redmond and
Emil Stank, their heirs or assigns, claimants and ap-
pellees, in the above proceeding, in the full and just
sum of Fifteen Thousand Two Hundred and Fifty
Dollars (\$15,250.00), to be paid to the said C. Ran-
som, John Hannofin, A. Artal, Gust Anderson, Erik
Johnson, Sam Atkinson, William Lundberg, J. L.
Porter, Tom Berg, Jacob Osterholm, J. L. Sage,
John Borland, J. R. Moreland, Louis Martin, Matt

Mattson, William R. Pierce, H. A. Broaded, P. McCormick, Chas. Kelly, Frank Hannigan, Roaslie Papes, T. Vandenenk, F. C. Avery, A. O. Johnson, John Sullivan, J. Abohden, Emil Lindquist, Frank Smith, Hade Roark, G. W. Bell, Robak Powell, Pat Redmond and Emil Stank, to which payment well and truly to be made, we do hereby bind ourselves our and each of our successors and assigns, jointly and severally by these presents.

Sealed with our seals, and dated at Seattle, this 19th day of May, 1909.

Whereas, lately at a District Court of the United States, for the Western District of Washington, Northern Division, in a proceeding for limitation of liability by the Northwestern Steamship Company, Limited, petitioner, owner of the steamer "Santa Clara," an American vessel, in which proceeding said C. Ransom, John Hannofin, A. Artal, Gust Anderson, Erik Johnson, Sam Atkinson, William Lundberg, J. L. Porter, Tom Berg, Jacob Osterholm, J. L. Sage, John Borland, J. R. Moreland, Louis Martin, Matt Mattson, William R. Pierce, H. A. Broaded, P. McCormick, Chas. Kelly, Frank Hannigan, Roaslie Papes, T. Vandenenk, F. C. Avery, A. O. Johnson, John Sullivan, J. Abohden, Emil Lindquist, Frank Smith, Hade Roark, G. W. Bell, Robak Powell, Pat Redmond and Emil Stank, and each of them, appeared as claimants, a decree was rendered against said Northwestern Steamship Company, Limited, in the sum of Three Hundred Dollars (\$300.00) in favor of each of said claimants, with costs, which said decree was entered in said Court on the 21st day

362 *The Northwestern Steamship Company, Ltd.*,
of April, 1909, and the said Northwestern Steamship
Company, Limited, having filed its assignment of
errors in the office of the Clerk of said District Court,
and thereafter having duly appealed from said de-
cree, and each and every part thereof, awarded said
sum of Three Hundred Dollars (\$300.00) to each of
said claimants, to the United States Circuit Court of
Appeals for the Ninth Circuit and said appeal having
been duly allowed and a citation issued directed to said
C. Ransom, John Hannofin, A. Artal, Gust Anderson,
Erik Johnson, Sam Atkinson, William Lundberg,
J. L. Porter, Tom Berg, Jacob Osterholm, J. L. Sage,
John Borland, J. R. Moreland, Louis Martin, Matt
Mattson, William R. Pierce, H. A. Broaded, P. Mc-
Cormick, Chas. Kelly, Frank Hannigan, Roaslie
Papes, T. Vandenenk, F. C. Avery, A. O. Johnson,
John Sullivan, J. Abohden, Emil Lindquist, Frank
Smith, Hade Roark, G. W. Bell, Robak Powell, Pat
Redmond and Emil Stank, and their proctors, and
each of them, citing and admonishing them and each
of them, to be and appear at a session of the United
States Circuit Court of Appeals for the Ninth Cir-
cuit, to be holden at the City of San Francisco, in the
State of California, in said Circuit, within thirty
(30) days from the allowance of said appeal; and,

Whereas, the said appellant desiring to supersede
said decree and each and every part thereof awarding
the sum of Three Hundred Dollars (\$300.00), with
costs, to each of said claimants, during the pendency
of its appeal, applied for and obtained from the Dis-
trict Court an order fixing the amount of the bond of
said appellant in the sum of Fifteen Thousand Dol-

lars (\$15,000.00), as a supersedeas bond, in addition to the bond on appeal for securing the costs on appeal, and authorizing said bond for costs on appeal and for said supersedeas to be in one bond, in the total sum of Fifteen Thousand Two Hundred and Fifty Dollars (\$15,250.00):

Now, therefore, the condition of the above obligation is such that if said Northwestern Steamship Company, Limited, shall prosecute its appeal to effect and pay the costs if its appeal is not sustained, and shall answer all damages and costs, if it fails to make its plea good, and if they abide by and perform whatever decree may be rendered by the United States Circuit Court of Appeals for the Ninth Circuit, in above-entitled proceeding, or on mandate of said Court by the Court below, to wit, the District Court of the United States for the Western District of Washington, Northern Division, then the above obligation to be void; otherwise to remain in full force and effect.

NORTHWESTERN STEAMSHIP COMPANY, LTD.

[Seal]

By W. R. RUST,

Its President.

Attest: D. D. JAMES,

Secretary.

NATIONAL SURETY COMPANY,

By ROBT. A. HULBERT,

Resident Vice-President.

[Seal]

Attest: GEO. W. ALLEN,

Resident Assistant Secretary.

F. 660.

P. & M. Div.

May 12, 1905.

National Surety Company of New York, surety on the foregoing bond, hereby certifies that it has heretofore filed in the proper office of the Department of the Interior at Washington, D. C., the following papers:

1. Evidence that it has obtained authority from the Attorney General of the United States under the Act of August 13, 1894, to act as sole surety on bonds in matters affecting the United States.

2. Evidence of the election of general officers of the company for the current year, with their names.

3. Evidence of the appointment of an agent for services of process in the ———— Judicial District of Washington.

4. Evidence of the authority of the within named Robert A. Hulbert and George W. Allen.

5. A copy of its quarterly financial statement as filed in the Department of Justice.

This certificate is made to comply with the instructions issued to this Company by the Secretary of the Interior on April 26, 1905, the designation of such letter being "P. & M. Div. 1189-04-1988."

In witness whereof, the said National Surety Company of New York has caused its seal to be hereto affixed and these presents to be executed by its proper officers this 20th day of May, 1909.

NATIONAL SURETY COMPANY.

By ROBT. A. HULBERT,

Resident Vice-President or Atty. in Fact.

[Seal]

Attest: GEO. W. ALLEN,

Resident Asst. Secretary.

The foregoing Bond and the sufficiency of the surety thereon is on this 20th day of May, 1909, ap-

proved as an Appeal and Supersedeas Bond by the undersigned.

C. H. HANFORD,

Judge of the District Court of the United States for the Western District of Washington, Northern Division.

[Endorsed]: Bond on Appeal. Filed in the U. S. District Court, Western Dist. of Washington. May 20, 1909. R. M. Hopkins, Clerk.

In the District Court of the United States for the Western District of Washington, Northern Division.

IN ADMIRALTY—No. 3658.

In the Matter of the Petition of the NORTHWESTERN STEAMSHIP COMPANY, LTD. (a Corporation), Owner of the Steamer "SANTA CLARA," an American Vessel, for Limitation of Liability.

Notice of Filing of Bonds.

To C. Ranson, John Hannafin, A. Artal, Gust Anderson, Erik Johnson, Sam Atkinson, William Lundberg, J. L. Porter, Tom Berg, Jacob Osterholm, J. L. Sage, John Borland, J. R. Moreland, Louis Martin, Matt Mattson, William R. Pierce, H. A. Broaded, P. McCormick, Chas. Kelly, Frank Hannigan, Roaslie Papes, T. Vandenenk, F. C. Avery, A. O. Johnson, John Sullivan, J. Abohden, Emil Lindquist, Frank Smith, Hade Roark, G. W. Bell, Robak Powell, Pat Redmond and Emil Stank and to William Martin and Julius L. Baldwin, Their Proctors:

You, and each of you, will please take notice, that on the 20th day of May, 1909, the Northwestern Steamship Company, Limited, petitioner in the above proceeding, and appellant has filed a bond for costs and damages on an appeal in the sum of \$250 in the Clerk's office of the United States District Court for the Western District of Washington, Northern Division, together with a supersedeas bond in the sum of \$15,000, both in one bond pursuant to order of said Court, a copy of which bonds is herewith served upon you.

You are further notified that the name of the surety in said bonds is National Surety Company.

Dated at Seattle, Washington, this 20th day of May, 1909.

BOGLE & SPOONER,
IRA A. CAMPBELL,

Proctors for Petitioner and Appellant.

Due service of copy hereof admitted this 20th day of May, 1909.

WM. MARTIN and
J. L. BALDWIN,
Proctors for Claimants.

[Endorsed]: Notice of Filing of Bonds. Filed in the U. S. District Court, Western Dist. of Washington. May 20, 1909. R. M. Hopkins, Clerk.

*In the District Court of the United States for the
Western District of Washington, Northern
Division.*

No. 3658.

In the Matter of the Petition of the NORTHWEST-
ERN STEAMSHIP COMPANY, Ltd. (a
Corporation), Owner of the Steamer "SAN-
TA CLARA," an American Vessel, for Limi-
tation of Liability.

Notice of Appeal.

To the American Surety Company of New York:

You will please take notice that the Northwestern Steamship Company, Ltd., a Corporation, petitioner above named, hereby appeals from the final decree of the above-entitled court, in the above-entitled cause, in favor of each of the claimants in said proceeding, against the Northwestern Steamship Company, Ltd., and American Surety Company of New York, its stipulator, in the sum of \$300.00, with costs, to each of said claimants, and from each and every part thereof awarding said claimants the sum of \$300.00 each, to the United States Circuit Court of Appeals for the Ninth Circuit.

BOGLE & SPOONER,
IRA A. CAMPBELL,

Proctors for Petitioner, Northwestern Steamship
Company, Ltd.

We hereby acknowledge service of a copy of the
Notice of Appeal in the above proceeding, after the

368 *The Northwestern Steamship Company, Ltd.*,
filing of the original in the office of the Clerk of the
above-entitled court, and hereby waive notice of any
further proceeding in said cause.

Dated Seattle, May 20, 1909.

AMERICAN SURETY COMPANY OF
NEW YORK.

By R. D. WELDON,
Manager and Attorney for Service and Acceptance
of Process.

[Endorsed]: Notice of Appeal. Filed in the U.
S. District Court, Western District of Washington.
May 20, 1909. R. M. Hopkins, Clerk.

*In the District Court of the United States for the
Western District of Washington, Northern Divi-
sion.*

No. 3658.

In the Matter of the Petition of the NORTH-
WESTERN STEAMSHIP COMPANY,
LTD. (a Corporation), Owner of the Steamer
"SANTA CLARA," an American Vessel, for
Limitation of Liability.

**Acceptance of Service [of Petition and Notice of
Appeal].**

We do hereby accept service of a filed copy of a
Petition and Notice of Appeal, filed copy of Bond
on Appeal, and Supersedeas Bond, copy of Notice
of Filing of Bond, filed copy of Assignment of
Errors, and filed copy of Order Allowing Appeal to
be Taken.

Dated at Seattle, Washington, this 20th day of May, 1909.

WM. MARTIN and

J. L. BALDWIN,

Proctors for Claimants.

[Endorsed]: Acceptance of Service. Filed in the U. S. District Court, Western Dist. of Washington. May 20, 1909. R. M. Hopkins, Clerk.

In the District Court of the United States for the Western District of Washington, Northern Division.

IN ADMIRALTY—No. 3658.

In the Matter of the Petition of the NORTH-WESTERN STEAMSHIP COMPANY, LTD. (a Corporation), Owner of the Steamer "SANTA CLARA," an American Vessel, for Limitation of Liability.

Citation [on Appeal—Copy].

To C. Ransom, John Hannafin, A. Artal, Gust Anderson, Erik Johnson, Sam Atkinson, William Lundberg, J. L. Porter, Tom Berg, Jacob Osterholm, J. L. Sage, John Borland, J. R. Moreland, Louis Martin, Matt Mattson, William R. Pierce, H. A. Broaded, P. McCormick, Chas. Kelly, Frank Hannigan, Roaslie Papes, T. Vandenenk, F. C. Avery, A. O. Johnson, John Sullivan, J. Abohden, Emil Lindquist, Frank Smith, Hade Roark, G. W. Bell, Robak Powell, Pat Redmond and Emil Stank, and Willian Martin and

370 *The Northwestern Steamship Company, Ltd.,*

Julius L. Baldin, their Proctors, and to R. M. Hopkins, Esq., Clerk of the Above-entitled Court:

You and each of you are hereby cited and admonished to appear at the United States Circuit Court of Appeals for the Ninth Circuit, to be holden at San Francisco in the State of California within thirty (30) days hereof, pursuant to an appeal filed in the office of the Clerk of the District Court of the United States for the Western District of Washington, Northern Division, wherein the Northwestern Steamship Company, Limited, petitioner, is appellant, and you, the said C. Ranson, John Hannafin, A. Artal, Gust Anderson, Erik Johnson, Sam Atkinson, William Lundberg, J. L. Porter, Tom Berg, Jacob Osterholm, J. L. Sage, John Borland, J. R. Moreland, Louis Martin, Matt Mattson, William R. Pierce, H. A. Broaded, P. McCormick, Chas. Kelly, Frank Hannigan, Roaslie Papes, T. Vandenenk, F. C. Avery, A. O. Johnson, John Sullivan, J. Abohden, Emil Lindquist, Frank Smith, Hade Roark, G. W. Bell, Robak Powell, Pat Redmond and Emil Stank, are appellees, to show cause, if any there be, why the decree rendered against the appellant should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable MELVILLE W. FULLER, Chief Justice of the Supreme Court of the

United States of America, this 20th day of May, 1909.

[Seal] C. H. HANFORD,
Judge of the District Court of the United States, for
the Western District of Washington, Northern
Division.

United States of America,
Western District of Washington,—ss.

Due service of the within Citation, after the filing of the same, in the office of the Clerk of the above-entitled court, is hereby admitted this 20th day of May, 1909.

WM. MARTIN and
J. L. BALDWIN,
Proctors for Claimants and Appellees.
RETURN ON SERVICE OF WRIT.

United States of America,
Western District of Washington,—ss.

I hereby certify and return that I served the annexed Citation on the therein named Julius L. Baldwin, by handing to and leaving a true and correct copy thereof with Julius L. Baldwin personally at Seattle in said District on the 20th day of May, A. D. 1909.

C. B. HOPKINS,
U. S. Marshal.
By M. T. McGraw,
Deputy.

[Endorsed]: Citation. Filed in the U. S. District Court, Western District of Washington. May 20, 1909. R. M. Hopkins, Clerk.

*In the District Court of the United States for the
Western District of Washington, Northern Divi-
sion.*

No. 3658.

In the Matter of the Petition of the NORTH-
WESTERN STEAMSHIP COMPANY,
LTD. (a Corporation), Owner of the Steamer
"SANTA CLARA," an American Vessel, for
a Limitation of Liability.

Praeceptum [for Transcript on Appeal].

To the Clerk of the Above-entitled Court:

You will please prepare, certify and forward to the Clerk of the United States Circuit Court of Appeals, for the Ninth Circuit, a transcript of the record on appeal in the above-entitled cause, pursuant to the rules of the United States Circuit Court of Appeals, for the Ninth Circuit.

IRA A. CAMPBELL and
BOGLE & SPOONER,

Proctors for Petitioners and Appellant.

[Endorsed]: Praeceptum for Process, etc. Filed in the U. S. District Court, Western Dist. of Washington. Jun. 2, 1909. R. M. Hopkins, Clerk.

*In the District Court of the United States for the
Western District of Washington, Northern Divi-
sion.*

IN ADMIRALTY—No. 3658.

In the Matter of the Petition of the NORTH-
WESTERN STEAMSHIP COMPANY,
LTD. (a Corporation), Owner of the Steamer
“SANTA CLARA,” an American Vessel, for
Limitation of Liability.

**Order [Directing Transmission of Original Exhibits
on Appeal].**

Now, on this 4th day of June, 1909, upon applica-
tion of Ira Campbell, Esq., proctor for petitioner and
appellant herein, and for sufficient cause appearing,
it is

Ordered that the Clerk of this Court certify and
transmit to the United States Circuit Court of Ap-
peals for the Ninth Circuit, the original exhibits used
and introduced upon the trial and hearing of this
cause, there to be inspected and considered, together
with the transcript of the record on appeal in this
cause.

C. H. HANFORD,
Judge.

[Endorsed]: Order to Transmit Original Ex-
hibits. Filed in the U. S. District Court, Western
Dist. of Washington. Jun. 4, 1909. R. M. Hopkins,
Clerk.

*In the District Court of the United States for the
Western District of Washington, Northern Divi-
sion.*

IN ADMIRALTY—No. 3658.

In the Matter of the Petition of the NORTH-
WESTERN STEAMSHIP COMPANY,
LTD. (a Corporation), Owner of the Steamer
“SANTA CLARA,” an American Vessel, for
a Limitation of Liability.

Clerk's Certificate to Transcript of Record.

United States of America,
Western District of Washington,—ss.

I, R. M. Hopkins, Clerk of the District Court of the United States, for the Western District of Washington, do hereby certify the foregoing three hundred eighty-one (381) typewritten pages, numbered from 1 to 381, inclusive, to be a full, true and correct copy of the entire record and proceedings in the above and foregoing entitled cause, and that the same, together with the original exhibits, separately certified, constitute the Apostles on Appeal from the order, judgment and decree of the District Court of the United States for the Western District of Washington, to the United States Circuit Court of Appeals for the Ninth Judicial Circuit.

I further certify that I hereto attach and herewith transmit the original Citation issued in this cause.

I further certify that the cost of preparing and cer-

tifying the foregoing apostles is the sum of \$266.15, and that the said sum has been paid to me by Bogle & Spooner and Ira A. Campbell, proctors for petitioner and libelant.

In testimony whereof, I have hereunto set my hand and affixed the seal of said District Court, at Seattle, in said District, this 11th day of June, 1909.

[Seal]

R. M. HOPKINS,

Clerk.

*In the United States District Court of the Western
District of Washington, Northern Division.*

IN ADMIRALTY—No. 3658.

In the Matter of the Petition of the NORTH-
WESTERN STEAMSHIP COMPANY,
LTD. (a Corporation), Owner of the Steamer
“SANTA CLARA,” an American Vessel, for
Limitation of Liability.

Citation [on Appeal—Original].

To C. Ransom, John Hannafin, A. Artal, Gust. Anderson, Erik Johnson, Sam Atkinson, William Lundberg, J. L. Porter, Tom Berg, Jacob Osterholm, J. L. Sage, John Borland, J. R. Moreland, Louis Martin, Matt Mattson, William R. Pierce, H. A. Broaded, P. McCormick, Chas. Kelly, Frank Hannigan, Roaslie Papes, T. Vandenenk, F. C. Avery, A. O. Johnson, John Sullivan, J. Abohden, Emil Lindquist, Frank Smith, Hade Roark, G. W. Bell, Robak Powell, Pat Redmond and Emil Stank, and William

Martin and Julius L. Baldwin, their Proctors,
and to R. M. Hopkins, Esq., Clerk of the Above-
entitled Court:

You and each of you are hereby cited and admonished to appear at the United States Circuit Court of Appeals for the Ninth Circuit, to be holden at San Francisco in the State of California within thirty (30) days hereof, pursuant to an appeal filed in the office of the Clerk of the District Court of the United States for the Western District of Washington, Northern Division, wherein the Northwestern Steamship Company, Limited, petitioner, is appellant, and you, the said C. Ransom, John Hannafin, A. Artal, Gust Anderson, Erik Johnson, Sam Atkinson, William Lundberg, J. L. Porter, Tom Berg, Jacob Osterholm, J. L. Sage, John Borland, J. R. Moreland, Louis Martin, Matt Mattson, William R. Pierce, H. A. Broaded, P. McCormick, Chas. Kelly, Frank Hannigan, Roaslie Papes, T. Vandenenk, F. C. Avery, A. O. Johnson, John Sullivan, J. Abohden, Emil Lindquist, Frank Smith, Hade Roark, G. W. Bell, Robak Powell, Pat Redmond and Emil Stank, are appellees, to show cause, if any there be, why the decree rendered against the appellant should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable MELVILLE W. FULLER, Chief Justice of the Supreme Court of the United States of America, this 20th day of May, 1909.

[Seal] C. H. HANFORD,
Judge of the District Court of the United States, for
the Western District of Washington, Northern
Division.

United States of America,
Western District of Washington,—ss.

Due service of the within Citation, after the filing of the same, in the office of the Clerk of the above-entitled court, is hereby admitted this 20th day of May, 1909.

WM. MARTIN and
J. L. BALDWIN,
Proctors for Claimants and Appellees.

RETURN ON SERVICE OF WRIT.

United States of America,
Western District of Washington,—ss.

I hereby certify and return that I served the annexed Citation on the therein named Julius L. Baldwin, by handing to and leaving a true and correct copy thereof with Julius L. Baldwin, personally, at Seattle in said District on the 20th day of May, A. D. 1909.

C. B. HOPKINS,
U. S. Marshal.
By M. T. McGraw,
Deputy.

Marshal's fees, \$2.12.
May 20/09.

378 *The Northwestern Steamship Company, Ltd.,*

[Endorsed]: Original. No. 3658. In the District Court of the United States for the Western District of Washington, Northern Division. In the Matter of the Petition of the Northwestern Steamship Company, Ltd., a Corporation, Owner of the Steamer "Santa Clara," an American Vessel, for Limitation of Liability. Citation. Filed in the U. S. District Court, Western Dist. of Washington. May 20, 1909. R. M. Hopkins, Clerk. Service of papers in this case may be made upon Bogle & Spooner and Ira A. Campbell, Attorneys for Petitioner, at No. ——— Street, Room ——— Colman Block, Seattle, Washington.

[Endorsed]: No. 1732. United States Circuit Court of Appeals for the Ninth Circuit. The Northwestern Steamship Company, Limited, Petitioner, Appellant, vs. C. Ransom, John Hannafin, A. Artal, Gust Anderson, Erik Johnson, Sam Atkinson, William Lundberg, J. L. Porter, Tom Berg, Jacob Osterholm, J. L. Sage, John Borland, J. R. Moreland, Louis Martin, Matt Mattson, William R. Pierce, H. A. Broaded, P. McCormick, Chas Kelly, Frank Hanigan, Roaslie Papes, T. Vandenenk, F. C. Avery, A. O. Johnson, John Sullivan, J. Abohden, Emil Lindquist, Frank Smith, Hade Roark, G. W. Bell, Robak Powell, Pat Redmond and Emil Stank, Appellees. In the Matter of the Petition of the Northwestern Steamship Company, Limited (a Corporation), Owner of the Steamer "Santa Clara," an American Vessel, for Limitation of Liability.

Apostles on Appeal. Appeal from the United States District Court for the Western District of Washington, Northern Division.

Filed June 16, 1909.

F. D. MONCKTON,
Clerk.

In the District Court of the United States for the Western District of Washington, Northern Division.

IN ADMIRALTY—No. 3658.

In the Matter of the Petition of the NORTHWESTERN STEAMSHIP COMPANY, LTD. (a Corporation), Owner of the Steamer "SANTA CLARA," an American Vessel, for a Limitation of Liability.

Clerk's Certificate to Exhibits.

United States of America,
Western District of Washington,—ss.

I, R. M. Hopkins, Clerk of the District Court of the United States, for the Western District of Washington, do hereby certify that the hereto attached, sealed package contains all the original exhibits introduced and used upon the hearing and trial of the above-entitled cause; that the said exhibits are herewith certified and transmitted to the Circuit Court of Appeals for the Ninth Circuit there to be inspected and considered together with the Apostles in this cause, certified of even date herewith; the said exhibits are so certified and transmitted pursuant to

380 *The Northwestern Steamship Company, Ltd.*,
the order of the District Court, a copy of which said
order will be found on page 377 of the Apostles of
said cause.

In testimony whereof, I have hereunto set my hand
and affixed the seal of said District Court, at Seattle,
in said District, this 11th day of June, 1909.

[Seal]

R. M. HOPKINS,
Clerk.

Exhibits "A" to "I" inclusive.

Claimants' Exhibit "A."

*In the Superior Court of the State of Washington,
for King County.*

No. —.

SAM ATKINSON,

Plaintiff,

vs.

NORTHWESTERN STEAMSHIP COMPANY,
LTD. (a Corporation),

Defendant.

Judgment.

This cause coming regularly on for hearing before
the Hon. Arthur E. Griffin, Judge, sitting with a
jury, on the 27th day of January, 1908, the plaintiff
appearing in person and by his attorney William
Martin, and the defendant appearing in person and
by its attorneys Ira A. Campbell and F. T. Merritt
and Bogle & Spooner; witnesses were examined on
behalf of the plaintiff and the defendant; whereupon
said cause was argued by counsel for the plaintiff and

defendant to the jury. The Court thereupon instructed the jury, and submitted said cause to them for their consideration. The jury thereupon retired and considered said cause, and thereafter returned their verdict into court wherein they found for the plaintiff and against the defendant in the sum of \$300.00.

It is, therefore, on motion of the plaintiff, ordered that judgment be entered in accordance therewith.

Wherefore, it is hereby considered and decreed that the plaintiff do have and recover of and from the defendant Northwestern Steamship Company, Ltd., a corporation organized and existing under and by virtue of the laws of the State of Nevada, in the sum of \$300.00, together with his costs and disbursements of this action, to be taxed, and that execution issue therefor.

Done in open court this 10 day of January, 1908.

ARTHUR E. GRIFFIN,

Judge.

O. K. as to form.

BOGLE & SPOONER,

IRA CAMPBELL.

[Endorsed]: No. 56,186. In the Superior Court of the State of Washington, for King County. Sam Atkinson, Plaintiff, vs. Northwestern Steamship Co., Ltd., Defendant. William Martin, Postoffice and Office Address: 204 to 210 Collins Building, Seattle, Wash., Attorney for ———.

*In the Superior Court of the State of Washington
for the County of King.*

State of Washington,
County of King,—ss.

No. 56,186.

SAM ATKINSON,

Plaintiff,

vs.

NORTHWESTERN STEAMSHIP COMPANY,
LTD. (a Corporation),

Defendant.

I, Otto A. Case, County Clerk of King County, and ex-officio Clerk of the Superior Court of the State of Washington for the County of King, do hereby certify that I have compared the foregoing copy with the original judgment in the above-entitled cause as the same appears on file and of record in my office, and the same is a true and perfect transcript of said original and of the whole thereof.

Witness my hand and the Seal of the said Superior Court, at my office in Seattle this 25 day of March, 1908.

[Seal]

OTTO A. CASE,

Clerk.

By Maurice Thompson,

Deputy.

[Endorsed]: No. 56,186. In the Superior Court of the State of Washington for the County of King.

Sam Atkinson, Plaintiff, vs. Northwestern Steamship Co., Ltd., Defendant. Certified Copy of Judgment. Wm. Martin, Attorney for Pltf., Seattle, Washington.

In the District Court of the United States in and for the Western District of Washington, Northern Division. In Admiralty—No. 3658. In the Matter of the Petition of the Northwestern Steamship Company, Ltd. (a Corporation), Owner of the Steamer “Santa Clara,” an American Vessel, for a Limitation of Liabilities. Claimants’ Exhibit “A.” Filed March 25, 1908. W. D. Totten, Special Commissioner.

Filed in the U. S. District Court, Western Dist. of Washington. Oct. 26, 1908. R. M. Hopkins, Clerk. A. N. Moore, Deputy.

No. 1732. U. S. Circuit Court of Appeals for the Ninth District. Claimants’ Exhibit “A.” Received Jun. 16, 1909. F. D. Monckton, Clerk.

Claimants' Exhibit 'B.'
EXECUTION DOCKET SUPERIOR COURT, KING COUNTY, WASHINGTON.

No. 144.	Names of Parties.	Date of Judgment and Amount of Amount Against Whom Judgment. Costs.	Record.	Page.	Fee	Page.	Execution Issued.
5	56186	Feby. 10, 08...\$300 00	113 80				
		Rendered.	60				

Against the Defendant and for 114.40
 Costs.

Sam Atkinson, Plaintiff,
 vs.
 Northwestern Steamship Co., Ltd., Defendant.

Filed Feb. 10, 1908.

Execution Returned.
 Proceedings Subsequent to Judgment.
 Appeal & Stay Bond.
 Filed Feby. 24—1908.

Amounts.
 Paid. Returned.

State of Washington,
County of King,—ss.

I, Otto A. Case, County Clerk and ex-officio Clerk of the Superior Court of said County, do hereby certify that the above and foregoing is a true and correct Abstract of the Judgment in the above entitled action as the same appears in the Execution Docket, Vol. 24, Page 187.

Witness my hand and the Seal of the said Superior Court, at my office in Seattle, this 25th day of March, 1908.

[Seal]

OTTO A. CASE,
Clerk.

By J. E. McDonald,
Deputy.

No. 56186. In the Superior Court of King County. Sam Atkinson, Plaintiff, vs. Northwestern S. S. Co., Defendant.

Transcript of Execution Docket.

Issued March 25, 1908. Execution Docket 24, Page 187. Fee \$60.00.

WM. MARTIN and
J. L. BALDWIN,
Attorneys for Plaintiff.

[Endorsed]: In the District Court of the United States in and for the Western District of Washington, Northern Division. In Admiralty—No. 3658. In the Matter of the Petition of the Northwestern Steamship Company, Ltd. (a Corporation), owner

386 *The Northwestern Steamship Company, Ltd.*,
of the Steamer "Santa Clara," an American vessel,
for a Limitation of Liabilities. Claimants' Exhibit
"B." Filed March 25, 1908. W. T. Totten, Special
Commissioner.

Filed in the U. S. District Court, Western Dist.
of Washington, Oct. 26, 1908. R. M. Hopkins, Clerk.
A. N. Moore, Deputy.

No. 1732. U. S. Circuit Court of Appeals for
the Ninth Circuit. Claimants' Exhibit "B." Re-
ceived June 16, 1909. F. D. Monckton, Clerk.

Claimants' Exhibit "C."

To the NORTHWESTERN STEAMSHIP COM-
PANY, LTD.

A Claim is hereby presented to you by each of the
Undersigned, passengers on the Steamship "Santa
Clara," on voyage from Seward and Valdez, Alaska
to Seattle, Washington, terminating at Seattle,
Washington, on or about October 19th, 1906, in the
sum of Five Hundred Dollars (\$500.00) each, for
breach of contract of carriage, and damages sus-
tained thereby by each of the undersigned, for which
demand of payment is hereby made.

Dated at Seattle, Washington, this 20th day of October, 1906.

C. RANSOM.	GUST ANDERSON.
JOHN BORLAND.	WILLIAM R. PIERCE.
F. C. AVERY.	J. OSTERHOLM.
TOM VANDENENK.	ERICK JOHNSON.
HADE ROARK.	MATT MATTSON.
J. L. SAGE.	EMIL LINDQUIST.
A. O. JOHNSON.	SAM ATKINSON.
JOHN HANNAFIN.	H. A. BROADED.
J. R. MORELAND.	FRANK SMITH.
EMIL STANK.	WM. LUNDBERG.
J. R. MORELAND.	CHAS. KELLY.
LOUIS MARTIN.	PAT REDMOND.
A. ARTAL.	PAT McCORMICK.
JOHN SULLIVAN.	

[Endorsed]: In the District Court of the United States in and for the Western District of Washington, Northern Division. In Admiralty—No. 3658. In the Matter of the Petition of the Northwestern Steamship Company, Ltd. (a Corporation), Owner of the Steamer “Santa Clara,” an American Vessel, for a Limitation of Liabilities. Claimants’ Exhibit “C.” Filed March 25, 1908. W. D. Totten, Special Commissioner.

Filed in the U. S. District Court, Western Dist. of Washington. Oct. 26, 1908. R. M. Hopkins, Clerk. A. N. Moore, Deputy.

No. 1732. U. S. Circuit Court of Appeals for the Ninth Circuit. Claimants’ Exhibit “C.” Received Jun. 16, 1909. F. D. Monekton, Clerk.

Claimants' Exhibit "E."

To the Northwestern Steamship Co., Ltd.,

A claim is hereby presented to you by each of the following passengers on the Steamship "Santa Clara" on the voyage from Seward and Valdez, Alaska, to Seattle, Washington, terminating at Seattle, Washington, on or about October 19th, 1906, in the sum of five hundred (\$500.00) each for breach of contract of carriage, and damages sustained thereby by each of said passengers, for which demand for payment is hereby made.

Dated at Seattle, Washington on the 20th day of October, 1906.

C. RANSOM.	P. McCORMICK.
JOHN HANNAFIN.	CHAS. KELLY.
A. ARTAL.	FRANK HANNIGAN.
GUST ANDERSON.	ROASLIE PAPES.
ERIK JOHNSON.	F. C. AVERY.
SAM ATKINSON.	A. O. JOHNSON.
WM. LUNDBERG.	JOHN SULLIVAN.
J. L. PORTER.	J. ABOHDEN.
TOM BERG.	EMIL LINDQUIST.
JACOB OSTERHOLM.	FRANK SMITH.
JOHN BORLAND.	HADE ROARK.
J. R. MORELAND.	G. W. BELL.
LOUIS MARTIN.	ROBAK POWELL.
MATT MATTSON.	PAT REDMOND.
WILLIAM R. PIERCE.	By WM. MARTIN,
H. A. BROADED.	Their Attorney.

[Endorsed]: In the District Court of the United States in and for the Western District of Washing-

ton, Northern Division. In Admiralty—No. 3658. In the Matter of the Petition of the Northwestern Steamship Company, Ltd. (a Corporation), Owner of the Steamer "Santa Clara," an American Vessel, for a Limitation of Liabilities. Claimants' Exhibit "E." Filed March 25, 1908. W. D. Totten, Special Commissioner.

Filed in the U. S. District Court, Western Dist. of Washington. Oct. 26, 1908. R. M. Hopkins, Clerk. A. N. Moore, Deputy.

No. 1732. U. S. Circuit Court of Appeals for the Ninth Circuit. Claimants' Exhibit "E." Received Jun. 16, 1909. F. D. Monckton, Clerk.

Claimants' Exhibit "I."
NORTHWESTERN STEAMSHIP COMPANY, LTD.
SHIPS' PAY ROLL

Dates.....

Give dates and number of
 meals per day on which
 board is allowed.

SS. Santa Clara Voy. No. 25 L. J. Schage, Commander. F. J. Stephen, Purser.

Name	Rank	Date		Time on Board	Rate of Pay Per Mo.	Wages Earned	Overtime Hours at	Amount	Board Money		Total Amount	Less Ad- vances and Deductions.	Balance Due.	Time Check No.	Signature.		
		Mo.	Day						Mo.	Day						Days at	Amount.
Recapitulation.																	
Deck Department.....							1110		285	70 15	1465 15						
Engineer's Department.....							825 70		59 50	46	931 20						
Steward's Department.....							814 05		15 20	47 45	876 70						
								2749 75	350 70	163 60	3273 05						
Pay of Crew Loading Cargo Overtime.....							49 40										
Pay of Crew Loading Cargo Regular Time.....							9 50										
Total								58 90									
Pay of Crew Discharging Cargo Overtime.....							146 80										
Pay of Crew Discharging Cargo Regular Time.....							10 85										
Total								157 65									

Extensions and Footings Correct. L. 10/22.

L. J. SCHAGE

Certified as Correct:

F. J. STEPHEN,
 Purser.

Approved for Payment:
 J. F. TROWBRIDGE,

General Manager.

Dates Sep. 20-21-22-23rd 3 Ea
Give dates and number of
meals per day on which
board is allowed.

24 1 "
Oct. 20 3 "
" 21 3 "

NORTHWESTERN STEAMSHIP COMPANY, LTD.

SHIPS' PAY ROLL

SS. Santa Clara Voy. No. 25 L. J. Schage, Commander. F. J. Stephen, Purser.

Name	Rank	Date Joined	Date Discharged	Time on Board	Rate of Pay	Wages Earned	Overtime Hours at	Amount	Board Money	Total Amount	Less Advances and Deductions.	Balance Due.	Time Check No.	Signature.
		Mo. Day	Mo. Day	Mo. Day	Per Mo.		Hours at	Per Mo.	Days at	Amount.				
L. J. Schage	Master	Sep. 20	Oct. 21	32	200	213 35			6/1 1 25	7 90				L. J. Schage.
H. E. Knight	1st Officer	20	21	29	90	87			3/1 1	3 35				
J. S. Allen	2nd Officer	20	21	32	75	80			6/1 70¢	4 45				
J. B. Holland	3rd Officer	20	21	32	60	64			6/1	4 45				
G. Mercer	Carp.	21	21	31	50	51 65	74½	40¢	29 80	5/1 60	3 20			
M. Gunderson	Watchman	20	21	32	45	48	41½		16 60	6/1	3 80			
F. Nord	Sailor	20	21	32	45	48	78		31 20	6/1	3 80			
P. Peterson		20	21	32	45	48	67		26 80	6/1	3 80			
K. Olsen		20	21	32	45	48	75		30	6/1	3 80			
C. Swanson		20	21	32	45	48	73½		29 40	6/1	3 80			
J. Smith		20	21	32	45	48	76		30 40	6/1	3 80			
A. Amundson		20	21	32	45	48	72½		29	6/1	3 80			
P. Johnson		20	21	32	45	48	82½		33	6/1	3 80			
H. Halderon		24	21	28	45	42	70½		28 20	2/1	1 40			
F. J. Stephen	Purser	20	21	32	90	96			6/1 1	6 35				
H. H. Short	Frt. Clerk	20	21	32	75	80			6/1 70¢	4 45				
A. Paulson	1st Off.	20	Sep. 22	3	90	9			3 1	3			4916	
J. Johnson	Sailor	20	21	2	45	3	1½	40¢	60	2 60¢	1 20		4 80	4912
Total						1110 60			285 60	70 15	1465 15			

Certified as Correct:

F. J. STEPHEN,
Purser.

Approved for Payment:

General Manager.

Paid off before me, Oct. 22, 1906.
A. HENRY PETERSON,
Dept. U. S. S. Com'g.

Dates Sep. 20-21-22-23rd 3 Ea

Give dates and number of meals per day on which board is allowed.

24 1 "
Oct. 20 3 "
" 21 3 "

SS. Santa Clara

Voy. No. 25

L. J. Schage, Commander. F. J. Stephen, Purser.

NORTHWESTERN STEAMSHIP COMPANY, LTD.

SHIPS' PAY ROLL

Name	Rank	Date Joined Mo. Day	Date Discharged Mo. Day	Time on Board Mo. Day	Rate of Pay Per Mo.	Wages Earned	Overtime Hours at	Amount	Board Money Days at	Amount.	Total Amount	Less Ad- vances and Deductions.	Balance Due.	Time Check No.	Signature.
J. W. Hare	Chf. Engr.	Sep. 20	Oct. 21	32	150	160			6/1 1	6 35	166 35				
J. S. Wright	1st Asst. Engr.	20	21	32	90	96	5	60¢	3 6/1 1	6 35	105 35				
C. Dybdal	2nd Asst. Engr.	20	21	32	75	80	11		6 60 6/1 70¢	4 45	91 05				
A. B. Gilman	3rd Asst. Engr.	20	21	32	65	69 35	4		2 40 6/1	4 45	76 20				
S. G. Price	Oiler	20	19	30	40	40	16	50¢	8 4/1 60¢	2 60	50 60				
J. De Camp		21	21	31	40	41 35	16		8 5/1	3 20	52 55				
M. Castro		23	21	29	40	38 65	8		4 3/1	2	44 65				
T. Burke	Fireman	21	21	31	50	51 65	8		4 5/1	3 20	58 85				
J. Robinson		21	19	29	50	48 35	15		7 50 3/1	2	57 85				
M. Siede		20	21	32	50	53 35	16		8 6/1	3 80	65 15				
M. De Camp		22	21	30	50	50	8		4 4/1	2 60	56 60				
H. Lauf		20	18	29	50	48 35	8		4 4/1	2 60	54 95				
W. Wuerst		24	20	27	50	45			1/1	80	45 80				
R. Johnke	Fireman	Sep. 20		1	50	1 65			1 60¢	60	2 25			4915	
E. Benson	Oiler	20	Sep. 1/2 21	1 1/2	40	2			1/2	1	3			4913	
Total						825 70			59 50	46 00	931 20				

Certified as Correct:

F. J. STEPHEN,
Purser.

Approved for Payment:

General Manager.

Paid off before me Oct. 22, 1906.
A. HENRY PETERSON,
Dept. U. S. S. Com'r.

Dates Sep. 20-21-22-23rd 3 Ea

Give dates and number of
meals per day on which
board is allowed.

NORTHWESTERN STEAMSHIP COMPANY, LTD.

SHIPS' PAY ROLL

Oct. 24	1 "
Oct. 20	3 "
" 21	3 "

Name	Rank	Date		Time on Board Mo. Day	Rate of Pay Per Mo.	Wages Earned	Overtime Hours at	Amount Board Money		Total Amount	Less Advances and Deductions.	Balance Due.	Time Check No.	Signature.
		Mo. Day	Mo. Day					Days at	Amount.					
J. Dillon	Steward	Sep. 20	Oct. 21	32	80	85 35		6/1	70¢	4 45				
J. Canham	2nd Steward	20	19	30	50	50		4/1	60¢	2 60				
P. Duncan	Cook	20	20	31	75	77 50		5/1		3 20				
G. Ashton	2nd Cook	22	19	28	60	56		2/1		1 40				
A. Santos	3rd Cook	22	19	28	45	42		2/1		1 40				
R. Wood	Baker	20	19	30	75	75		4/1		2 60				
R. B. McEachron	Pantry	20	20	31	40	41 35		5/1		3 20				
D. Brown	2nd Pantry	20	19	30	35	35		4/1		2 60				
H. McKevitt	Messman	20	20	31	40	41 35	32 40¢	5/1	12 80	3 20				
O. Dodge	Sal. Watch.	20	20	31	30	31		5/1		3 20				
R. Canfield	Waiter	20	19	30	30	30		4/1		2 60				
W. Moore		20	20	31	30	31		5/1		3 20				
J. McGinnis		20	19	30	30	30	3 40¢	4/1	1 20	2 60				
W. J. Miller		20	19	30	30	30		4/1		2 60				
J. Mitchell		21	Sep. 22	2	30	2		2	60¢	1 20				Deserter.
C. McLaughlin		1/2 20	22	2 ¹ / ₂	30	2 50		2/1		1 40				
W. Todd		22		1	30	1		1		60				
J. Shook		24	Oct. 19	26	30	26		x/1		20				
W. H. Newcomer		24	19	26	30	26		x/1		20				
J. Ellis		1 22	19	27 ¹ / ₂	30	27 50		1/2		1				
J. Frehall		21	19	20	30	20	3 40¢	3/1	1 20	2				
J. Hudson		24	Sep. 29	6	30	6								
R. Oliver		30	Oct. 8	9	30	9							4918	Deserter.
R. Romano	2nd Baker	Oct. 7	19	13	60	26								
J. Butler	Waiter	Aug. 29	Aug. 30	2	30	2		2	60¢	1 20				4911
P. Miller	Messboy	Sep. 20		1	30	1		1		60				4914
W. C. South	Waiter	1 22	Total	1 2	30	50		/1		20				4917
						814 05				15 20				
										47 45				
										876 70				

Certified as Correct:

P. J. STEPHEN,
Purser

Approved for Payment:

General Manager

Paid off before me Oct. 22, 1906.
A. HENRY PETERSON,
Dept. U. S. S. Com'r.



LEAVE THIS MARGIN BLANK FOR BINDING
AGENTS AND PURSER'S PASSENGER WAY BILL.

Steamship Santa Clara. Way 25 Stealing from Seattle to Nyak and Way Ports Sep. 24, 1906.

Table	Urn No.	Class	Name	Room	Berth	From	To	Amount	Remarks.
			NOTE TO PURSER—Arrange the Ticket numbers in regular numerical order, beginning at the lowest. Enter the Tickets in the same order as they appear herein, and turn them into General Office on arrival with Manifest and other Documents.						
14	3845	M. R.	Vaughan.....	Seattle		Catala Spl.	22 50	Sea Of.	
	3842	Mrs. C. L.	Moore.....			Corlova.....	22 50		
	3	P. J.	Chamber.....				22 50		
	4	J. J.	Murphy.....				22 50		
			6 A. P. Yarnes.....			Ellamar.....	40	130.00	
7	535	H.	Reay.....			Valdez.....	40		
	6	Miss M.	Letton.....				40		
	7	Mrs. J.	Brennan.....				40	182.50	
	8	Mrs. J.	De Verney.....				40	312.50	
	9	G. L.	Hill.....			312 50 Spl.	22 50		
14	2606	S.	Hancock.....				40	Sch. Dock	
	7	T. N.	Lynch.....				40		
	2797	J. De	Verney.....				15	Purser	
			8 J. W. McMeekin.....				15	In connection with Ticket 430 Purser	
R. T.	318	T.	Larson.....				35	In connection with Ticket 2802 Sea off.	
	319	Mrs. D.	.....			R. T.	35		
			.....			".....	35		
14	3858	J. T.	O'Brien.....			La Touche.....	40	70	
	9	M. C.	Orton.....				40		
	90	J. J.	McGraw.....				40	160	
			1 J. J. Nash.....				40	230—	
	2905	R. R.	Hornor.....				40	Sch. Dock	
20	575								
Pass	353	N. K.	Vosper.....			Seward 1/2.....	20	Sea Of.	
	750	J.	Dodson.....			Spl.	22 50		
14	2700	Mrs. D. C.	Smith.....				40	Purser	
	4400	L.	Hill.....			Valdez			
	1	J.	Borguson.....			La Touche... 5	5		
	2	B. A.	Heigler.....				5		
	3	W.	McCarthy.....				7		
	3225	S. D.	McCarthy.....			Seward.....	7	Valdez Agency	
	4404	W. M.	Pitman.....			Ellamar			
	5	G. B.	Smalley.....			La Touche... 5	5	Purser	
	6	Mrs. J.	Day.....				7		
	7	W.	Jones.....			Seward.....	7		
	8	J. F.	Sumner.....			La Touche	7		
	9	J. H.	Denny.....				7		
	4								
	3741	B.	Vongilder.....			Seward			
	5	C.	Larson.....			Seldovia.....	10	Seward Agency	
	6	J. J.	Cavana.....				10		
	3227	Eld.	Woods.....			Valdez			
						Seward.....	7	Valdez Agency	
								879	



LEAVE THIS MARGIN BLANK FOR BINDING
AGENT'S AND PURSER'S PASSENGER WAY BILL.

Steamship Santa Clara. Voy. 25 Sailing from Seattle to Nyak and Way Ports Sep. 24, 1906.

Ticket Form No.	Class	Name	Room	Berth	From	To	Amount	Remarks.
NOTE TO PURSER—Arrange the Ticket numbers in regular numerical order, beginning at the lowest. File the tickets in the same order as they appear hereon, and turn them into General Office on arrival with Manifest and other Documents.								
7 S	430	J. De Verney.....			Steerage			
					Seattle	Valdez Chg. D 1st class.	25	Sea off.
14 S	2802	J. W. McMeekin.....					25	Sch. Dock
	647	A. Iverson.....			Valdez	La Touche.....	3	Valdez Agency
	8	F. Wolfinger.....					3	
	9	D. Manley.....					3	9.00
<hr/>								
2476		W. J. Perry.....					3	Purser
7		J. Porter.....					3	
8		C. E. Poole.....					3	
9		G. G. Geraghty.....					3	
80		C. Hockett.....					3	
650		R. T. Donaldson.....				Seward	4	Valdez Agency
2481		J. McClave.....		Orca		Seldovia	8	Purser
4154		H. W. Henderson....		Seward			7	Seward Agency
Dog	552	B. Vongilder 3 Dogs.					4 50	
							<hr/>	<hr/>
							97	50

LEAVE THIS MARGIN BLANK FOR BINDING
 AGENTS AND PURSER'S PASSENGER WAY BILL.

to show same data May 25, sailing from Nyak to Seattle and Way Ports Oct. 6th, 1906.

From	Name	Room	Birth	From	To	Amount	Remarks
101	TO PURSER	Advance the Ticket numbers in regular numerical order, beginning at the lowest, and the tickets in the same order as they appear herein, and turn them into General Office on arrival with Manifest and other documents.					
11	4110 G. W. Elias	Nyak	Seattle	Seattle	60	Purser	
	11 E. Swanson				60		
	12 J. Nilson				60		
	13 M. Olson				60		
	14 C. Haltingren				60		
	15 W. Simons				60		
	16 T. H. Jeter	Selkvia	Seward	Seward	10		
	17 A. Barnes				10		
	18 A. Andrews				47		
	19 J. A. Brown				47		
	20 J. W. Phillips				47		
	21 W. M. Siles				47		
	22 M. G. Hutchinson				47		
	23 Mrs. do				47		
	24 W. W. White				47		
	25 T. G. Gerding				47		
	26 R. H. Surgeat				47		
	27 A. La Rocque				47		1179-
	28 J. Pruyter				47		
	29 C. Anderson				47		
	30 E. Bassett				47		
	31 J. C. Klopfenstein				47		
	32 H. Augustad				47		
	33 W. J. McDonnell				47		
	34 N. P. Brian				47		
35-47	W. T. Redman	Seward	Valdez	Valdez	7	Seward Agency	
	48 M. McCarty				7		
	49 E. Cameron				7		
	50 Miss S. McCSorley				7		
	53 J. Gufnot				7		
	54 E. Words				7		
	55 N. Peterson				7		5750
	56 J. C. Martin			Sp'l	3 50		
	57 J. E. O'Reilly			do	5		
4435	H. Chervcaus				7	Purser	
	36 H. Ash				7		
	37 J. E. Stein				7		
15	107 Capt. J. C. Johnson			Seattle Thro.	36	Dora	
	109 J. A. Wireled				34		
	111 C. D. Hawley				34		
	12 F. T. Phelps				34		
	13 H. Miller				34		
	14 F. Dief				34		
	15 W. I. Hawley				34		
	16 J. D. Patch				34		
	17 C. Helm				34		
	19 G. W. Dutton				34		
	20 W. Chapman				34		
	21 A. Richardson				34		
	22 P. Johnson				34		
15	23 R. Dunn	Unahska	Seattle	Seattle	22 50	Seattle Office	
30	641 J. McKinells			Sp'l	22 50	Seward Agency	
	42 M. E. Ryan			do	22 50		
	43 S. P. Hart				40	85 00	
		Ford			1826 50		

LEAVE THIS MARGIN BLANK FOR BINDING
AGENTS AND PURSER'S PASSENGER WAY BILL.

Steamship Santa Clara May 25, sailing from Nyak to Seattle and Way Ports Oct. 6th, 1906.

Full Name	Class	Room	Berth	From	To	Amount	Remarks.
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NOTE: All Passengers Arrange their Ticket numbers in regular numerical order, beginning at the lowest. File the tickets in the same order as they appear hereon, and turn them into General Office on arrival with manifest and other documents.

		Brit. Port,--				Is26 50	
		Seward		Seattle		Seward Agency	
39	611 S. A. Diers.....				Sp'l.,	22 50	
	45 J. Alton.....				do.,	22 50	
	46 J. T. Le Beau.....				do.,	22 50	
	47 G. Rensay.....				do.,	22 50	
	48 A. G. Harwick.....				do.,	22 50	
	49 O. Randall.....				do.,	22 50	
	50 W. D. Watson.....					40	
	52 E. C. Trafford.....					40	
	53 L. Reno.....					40	
	54 Mrs. A. C. Gabriel.....					40	
	55 F. P. Skoin.....					20	
	56 J. Loebner.....					40	
	57 Mrs. do.....					40	
	58 M. B. Holland.....				Sp'l.,	22 50	
	59 E. Bartholf.....				do.,	40	
	60 Mrs. do.....					40	
	61 C. Isaac.....					40	
	63 Mrs. S. O. Morford.....				Sp'l.,	22 50	
	64 F. E. Youngs.....				do.,	22 50	
	65 Mrs. R. Butler.....				do.,	40	
	66 J. A. McDonnell.....					40	
	67 J. H. Mason.....					40	
	68 G. A. Thayer.....					40	
	452						
Pass	353 N. K. Vesper.....				½,	20	\$50.00
	453						
do	114 Mrs. M. Welch.....				½,	20	
14	4438 F. Alexander.....					40	Purser
	40 S. C. Cheam.....			La Touche	Valdez	5	
	41 F. T. Kelley.....					5	
	39 J. J. McGraw.....			Seattle	.....	40	
25	242 R. D. Gray.....			Valdez	Catala	15	Valdez Agency
	197 A. K. Crawford.....				Seattle	40	
	98 F. J. Burgen.....					40	
	99 J. E. Barrett.....					40	
	200 D. Donohue.....					40	
	201 A. F. Hoffman.....					40	
	2 R. H. Schultz.....					40	
	3 P. G. Sweatts.....					40	
	4 J. Humphreys.....					40	
	5 J. Ottorre.....					40	
	6 J. A. Jacobson.....					40	
	7 Mrs. J. Walters.....					40	910.00
	8 J. Miller.....					40	
	9 L. Schaefer.....					40	
	10 N. Merhaut.....					40	
	11 E. S. Hachler.....					40	
	12 A. L. Nygard.....					40	
	13 J. Erickson.....					40	
	14 T. A. Bell.....					40	
	15 T. Ferfor.....					40	
	16 Mrs. G. T. Guthrie.....					40	
	17 S. K. Kendrick.....					15	In connection with Ticket #150.
	18 N. Jensen.....					40	
	19 G. Benson.....					40	
				Ford		3646 50	

LEAVE THIS MARGIN BLANK FOR BINDING
AGENTS AND PURSEES PASSENGER WAY BILL.

Steamship Santa Clara, Voy. 25 Sailing from Njak to Seattle and Way Ports Oct. 6th, 1906.

Port of Call	Form No.	Class	Name	Room	Berth	From	To	Amount	Remarks.
NOTE TO PURSER Arrange the Ticket numbers in regular numerical order, beginning at the lowest rate to be ticketed, as they appear above, and turn them into General Office on arrival with Manifest and other documents.									
	25	251	F. T. Elkens	Valdez	.....	40	Seattle	364.65	Valdez Agency
		21	W. Elkens			40		40	
		22	M. H. Wilkinson			40		15	In connection with ticket # 2496.
		23	J. C. Martin			40			
		24	Miss Jessie			40			
		25	R. A. Schroeder			40			
		26	Wm. Schneider			40			
		27	J. H. Rice			40			
		28	A. C. Tompkins			40			
		29	W. E. Smith			22	Sp'l	50	
		30	R. Wilson			40			
		31	C. Crenshaw			40			
		32	C. J. Bange			40			
		33	C. Luber			15			In connection with ticket # 156.
		34	F. Korman			40			
		35	B. P. Bassart			40			
		36	J. W. Williams			40			
		37	W. O. Eberley			40			
		38	Oscar Sale			40			
		39	W. Williams			40			
		40	J. G. Snyder			40			
		41	J. F. Rice			40			\$52.50
		43	L. L. Mason			40			
		44	J. Wickert			40			Purser
	14	4442	J. Wickert			40			
		43	S. Paige			40			
		44	A. Knapik			40			
		45	Lieut. H. L. Simpson			40			
		46	"Corporal" E. H. Skiffers			40			
		47	T. Kennedy			40			
		R. T.	318 T. Larson			35	R. T.		Seattle office.
		319	Mrs. do			35	do		
		421							
	Pass	43	M. K. Radgers			16	1/2		Purser
		422							
		44	Mrs. do and Sub.						
		8							
		R. T.	289 Mrs. W. H. Lyon			32	R. T.		Seattle office
		14	4448 Miss M. Lyon			50	Sp'l		Purser
		49	S. W. Wall			50	Sp'l		48-
		50	W. R. Thomas			32			109
		51	Clarence Cunningham			32			

4998

LEAVE THIS MARGIN BLANK FOR BINDING
AGENTS AND PURSERS PASSENGER WAY BILL.

Steamship Santa Clara, May 25, Sailing from Nyak to Seattle and Way Ports Oct. 6th, 1906.

Form No. 4100 Name Room Berth From To Amount Remarks.
 4014 4015 4016 4017 4018 4019 4020 4021 4022 4023 4024 4025 4026 4027 4028 4029 4030
 Make the entries in the same order as they appear hereon, and turn them into General Office on arrival with Manifest and other documents.

Storage—

14 8 248 22 [Poly (two) employees
 53 20 [Nancy] (Cannerman and Japs

No.	Name	Room	Berth	From	To	Amount	Remarks.
Storage—							
14 8 248 22	[Poly (two) employees			Nyak	Seattle	2.00	
53 20	[Nancy] (Cannerman and Japs			Nyak	Seattle	3.00	
Seward							
150	J. P. Bort			Seward	Valez	4	Seward Agency.
60	H. Doughty					4	
61	J. Meronik					4	
62	A. Hall					4	
63	Song					4	
65	W. Chambers					4	2.00
66	W. L. Driver					4	
Seattle							
20 8 202	D. St. Claire			Seattle	Seattle	25	
3	J. Duncan					25	
4	F. Smith					25	
5	E. Lindquist					25	
7	L. Martin					25	
8	J. Sullivan					25	
9	O. Engson					25	
12	S. Nyland					25	
13	T. Berg					25	
14	Thos. Dugmore					25	
15	A. Axial					25	
16	H. Martin					25	
17	J. Hanfian					25	
18	J. S. Sage					25	
19	J. Borland					25	
20	C. Ranson					25	1.50
21	T. Vandemonk					25	
22	J. S. Porter					25	
23	L. Atkinson					25	
24	P. Rehnard					25	
25	Wm. Lundberg					25	
26	Gus Anderson					25	6.50
28	Chas. Kelley					25	
29	T. B. Runsey					25	
30	W. R. Pierce					25	
La Touche							
14 S 2484	J. W. Arnold			La Touche	Valez	25	Purser
5	J. P. Carroll					3	
6	H. A. Bronell				Seattle	25	
7	I. Powell					25	
8	C. Hackett					25	
9	J. Myers					25	
Valez							
90	M. Howard			Valez	Catalla Sp/1	5 50	
1	C. Storfhand					5 50	
2	A. Steinhugh					5 50	
3	M. Hill					5 50	
4	A. Ramp					5 50	
5	C. Miller					5 50	
6	J. C. Martin				Seattle	25	
7	J. Osterholm					25	
8	E. Johnson					25	
9	M. Matson					25	
3100							
	J. Nichols					25	
	M. Martinsen					25	
Ford							
						6602 50	

LEAVE THIS MARGIN BLANK FOR BINDING
AGENTS AND PURSER'S PASSENGER WAY BILL.

Steamship Santa Clara, Voy. 25, Sailing from Nyak to Seattle and Way Ports Oct. 6th, 1906.

Ticket Date	No. Class	Name	Room	Berth	From	To	Amount	Remarks.	
		Brt. Ford.						6602 50	
25	8	P. McCormick.....			Valdez	Seattle	25	Valdez Agency	
		6 R. Spenk.....			Suspense	25 00.....	25		
		7 J. Marland.....					25		
		9 H. Olsen.....					25		
		50 S. J. Kendrick.....					25		
		1 R. Gardiner.....					25		
		2 F. C. Avery.....					25		
		3 N. Lockstrom.....					25		
		4 A. O. Johnson.....					25		
		5 H. Rock.....					25		
		6 C. Liber.....					25		
		7 J. N. Bue.....					25		
		8 E. Stank.....					25		
14	8	3103 36 [Thirty-six] Enlisted men						325.00	
		Soldiers.....							
		3102 F. Hagen.....			Ft. Lisicum		900	Purser	
		4 L. P. Ohman.....			Ellamar		25		
		5 G. Sunderman.....			Orca		15		
		6 J. Yoshida—Jap.....					15	96750	
							12 50		
25	8	S. Pang —Jap.....			Valdez		25	Valdez Agency	
Dog	81	One Dog [R. Dunn]....			Seward		5		
							7925		
							159.....	25	
							160.....	25	
							161.....	25	
							75 00		

NOTE TO PURSER—Arrange the Ticket numbers in regular numerical order, beginning at the lowest. File the Tickets in the same order as they appear herein, and turn them into General Office on arrival with Manifest and other Documents.

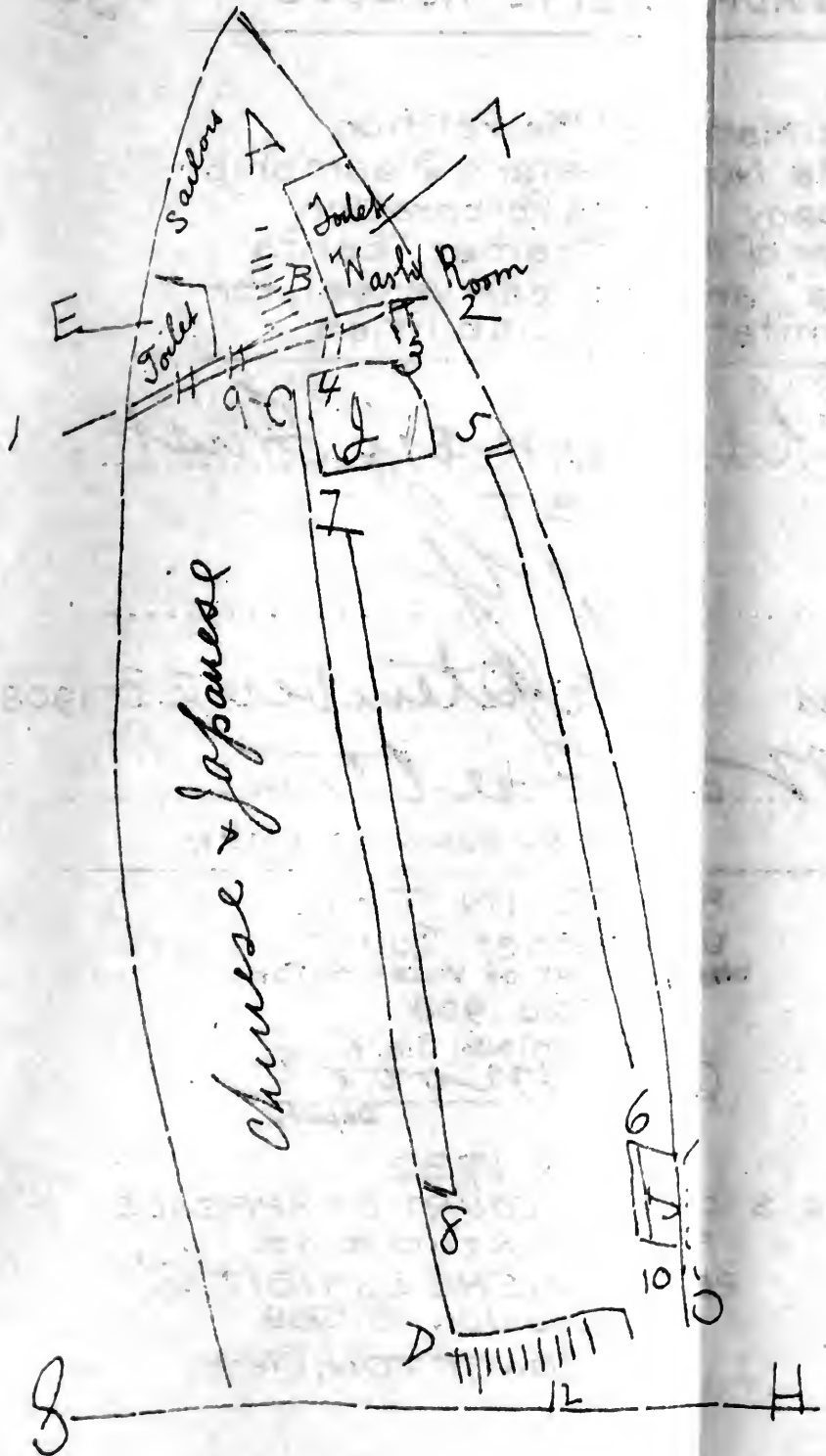
[Endorsed]: In the District Court of the United States in and for the Western District of Washington, Northern Division. In Admiralty. No. 3658. In the Matter of the Petition of the Northwestern Steamship Company, Ltd. (a Corporation), Owner of the Steamer "Santa Clara," an American Vessel, for a Limitation of Liabilities. Claimants' Exhibit "I." Filed Sept. 30, 1908. W. D. Totten, Special Commissioner.

Filed in the U. S. District Court, Western Dist. of Washington. Oct 26, 1908. R. M. Hopkins, Clerk. A. N. Moore, Deputy.

No. 1732. U. S. Circuit Court of Appeals for the Ninth Circuit. Claimants' Exhibit "I." Received Jun. 16, 1909. F. D. Monckton, Clerk.



PETITIONER'S EXHIBIT 'G'



[ENDORSED]:

IN THE DISTRICT COURT
OF THE UNITED STATES
IN AND FOR THE
WESTERN DISTRICT OF WASHINGTON
NORTHERN DIVISION.
IN ADMIRALTY. NO. 3658.

off

In the Matter of the Petition
of the Northwestern Steamship
Company, Ltd. (a Corporation),
owner of the Steamer "Santa
Clara", an American vessel, for
a Limitation of Liabilities.

Petitioner's List

EXHIBIT

"G"

Filed

September 23 1908.

W. D. Zetter

SPECIAL COMMISSIONER

FILED IN THE
U. S. District Court
Western Dist. of Washington.

OCT. 26. 1908

R. M. HOPKINS, Clerk

A. N. Moore

Deputy.

No. 1732

U. S. CIRCUIT COURT OF APPEALS.

FOR THE NINTH CIRCUIT. "G"

PETITIONERS EXHIBIT "G."

Received JUN 16. 1909.

F. D. MONCKTON, Clerk.

Department of Commerce and Labor.

STEAMBOAT-INSPECTION SERVICE.

CERTIFICATE OF INSPECTION.

For Passenger Steamers of Over 100 Gross Tons.

State of Washington } Ocean Passenger Steam Santa Clara.

District of Puget Sound }

APPLICANT having been made in writing to the undersigned, *Inspectors for this District*, to inspect the Steamer Santa Clara, of Seattle, in the State of Washington whereof the Northwestern Steamship Company is owner and L. J. Schrage is master, and having performed that duty in accordance with the provisions of Title LII, Revised Statutes, and the Rules and Regulations of the Board of Supervising Inspectors, on the 7th day of Aug., 1906, Do Certify that the said vessel was built at Everett, in the State of Washington in the year 1900; that the Hull is constructed of wood, and, as shown by official records, is of 1588 gross tons; that the said vessel has 31 Staterooms and 123 Berths, and is allowed to carry 360 passengers, viz: 123 First-cabin, 277 Second-cabin, and 237 Deck or Steerage Passengers; also, is required to carry a full complement of officers and crew, consisting of 1 Master, — Pilot, 3 Mate, 4 Engineer, 3 Firemen, 2 Watchmen, 4 Quartermasters, 5 Seamen, 3 Oilers, 3 Coal Passers, and Deck Crew. (Allowed to carry 16 Persons when needed in Steward's and other departments not connected with the navigation of the vessel.) That the said vessel is provided with 1 Triple Compound Condensing Engine of 1574, 26.45 inches diameters of cylinders and 2 9 12 feet stroke of piston, and 2 Boilers, 9' 2" feet in length and 120 inches in height, made of pipe-steel draws, in the year 1900, and is allowed a steam pressure of 225 pounds to the square inch, and no more. The said vessel is permitted to navigate, for one year, the waters of the Pacific Ocean Coastwise and Bering Sea, and touching at intermediate ports, a distance of about miles and return.

THE FOLLOWING PARTICULARS OF INSPECTION ARE ENUMERATED, VIZ:

Load line draft	19 feet inches.	Hose, internal diameter of	1½, 2½	Flues	.....	No.
Water-tight cross bulkheads	No. 3.	Hose, length of	430 feet.	Length	.....	.....
Has permanent stairways from main to upper deck	Yes.	Fire buckets	No. 80	Diameter	.....	.....
	2	Water barrels	No.	Thickness	.....	.....
Anchors and cables	3 No. 2	Water tanks	No.	Length	..... 92' & 7' 4"	No. 672
Drift	No. 1	Axes	No. 10	Diameter	..... 4' & 3"	.....
Has iron or roller ropes	Yes.	Stoves securely fastened to deck	.....	Thickness	..... 134" & .095"	.....
Has iron or chain	Yes.	Has two copies steambat law on board	.....	Safety valves	..... No.; aggregate area	..... 25.11"
Has additional steering apparatus, consisting of relief tackle	.....	Has two copies pilot rules on board	.....	Weight adjusted to blow off at	..... lbs.	.....
Has tie-raph	.....	Boilers	2 No.	Steam gauges	..... No. 3	.....
Has engine tubes from pilot house to engine room	Yes.	When built	1900.	Gauge cocks	..... 2 en. B. No. 4	.....
Has name in letters six inches long on side of pilot house	Yes.	Where built	New York, N. Y.	Low water gauges	..... 1 " No. 2	.....
Location of steam whistle	Correct.	By whom built	Balcock Wilcox.	Fusible plugs	..... No. 2	.....
Compasses	No. 2	Drum	.....	Feed pumps for boilers	..... No. 5	.....
Has signal lights	8' x 9'	Boiler plate	..... steel.	Steam pumps, double acting	..... No. 2	.....
Metal lifeboats	No. 2	Thickness of	..... 515'	Donkey boilers	..... No. 1	.....
Wooden lifeboats	No. 4	Tensile strength of	..... 60,000	Diameter of	..... 54"	.....
Working boat	No. 1	Ductility of	..... 56%	Thickness of plate	..... 3/8"	.....
Collapsible (folding) lifeboats	No. 1	Record in local inspectors' office at San F.	.....	Tensile strength of plate	..... 60000	.....
Every lifeboat has equipment in accordance with the rules	Yes.	Boiler shell drilled	..... 1.	Ductility of plate	..... 56%	.....
Life rafts	No. 2	Thickness of plate found	..... /100 inch.	Record in office of local inspectors at S. F.	..... 1	.....
Life preservers	No. 404	Boiler shell drilled	..... 1.	Steam pressure allowed to donkey boiler	..... 80	..... lbs.
Has ice-carrying projectiles and means of propelling them	Yes.	Drum	.....	Hydrostatic pressure applied to donkey boiler	..... 126	..... lbs.
Fire extinguishers	No. 8	Longitudinal seams	..... triple . riveted;	Where built	..... San Francisco	.....
Portable hand pumps	No.	holes	..... drilled	By whom built	..... Keyston Boiler Works.	.....
Hand fire pumps	No. 2	Steam	..... 225	Hydrostatic pressure applied	..... 338 lbs.	.....

Seattle }
 State of Washington } ss: **BION B. WHITNEY, Inspector of Hulls,**
ROBERT A. TURNER, Inspector of Boilers,

Sworn to before me this day of, 190

Custom-House,, 190
 WE HEREBY CERTIFY that the above Certificate is a true copy of the original on file in this office.

BION B. WHITNEY,
ROBERT A. TURNER,
 Local Inspectors.

*To be filled in only for seagoing steam vessels.

Inspectors may in all cases accept the record as given in this certificate when the steamer is inspected in a district other than that where the record is kept, noting in Form 840 B the date of certificate and place of inspection.

Two copies of this Certificate must be exposed, under glass, where passengers and other persons can see them. (Section 4423, Revised Statutes.)

AMENDED FORM APPROVED AUGUST, 11, 1905.
LAWRENCE O. MURRAY,
 Acting Secretary of Commerce and Labor.

GEO. UHLER,
 Supervising Inspector General.



IN THE
United States
Circuit Court of Appeals
FOR THE NINTH CIRCUIT

THE NORTHWESTERN STEAMSHIP COM-
PANY, LIMITED, Petitioner,

Appellant,

vs.

C. RANSOM, JOHN HANNAFIN, A. ARTAL,
GUST ANDERSON, ERIK JOHNSON, SAM
ATKINSON, WILLIAM LUNDBERG, J. L.
PORTER, TOM BERG, JACOB OSTERHOLM,
J. L. SAGE, JOHN BORLAND, J. R. MORE-
LAND, LOUIS MARTIN, MATT MATTSON,
WILLIAM R. PIERCE, H. A. BROADED, P.
McCORMICK, CHAS. KELLY, FRANK HAN-
NIGAN, ROASLIE PAPES, T. VANDENENK,
F. C. AVERY, A. O. JOHNSON, JOHN SULLI-
VAN, J. ABOHDEN, EMIL LINDQUIST,
FRANK SMITH, HADE ROARK, G. W. BELL,
ROBAK POWELL, PAT REDMOND and EMIL
STANK,

Appellees.

No. 1732

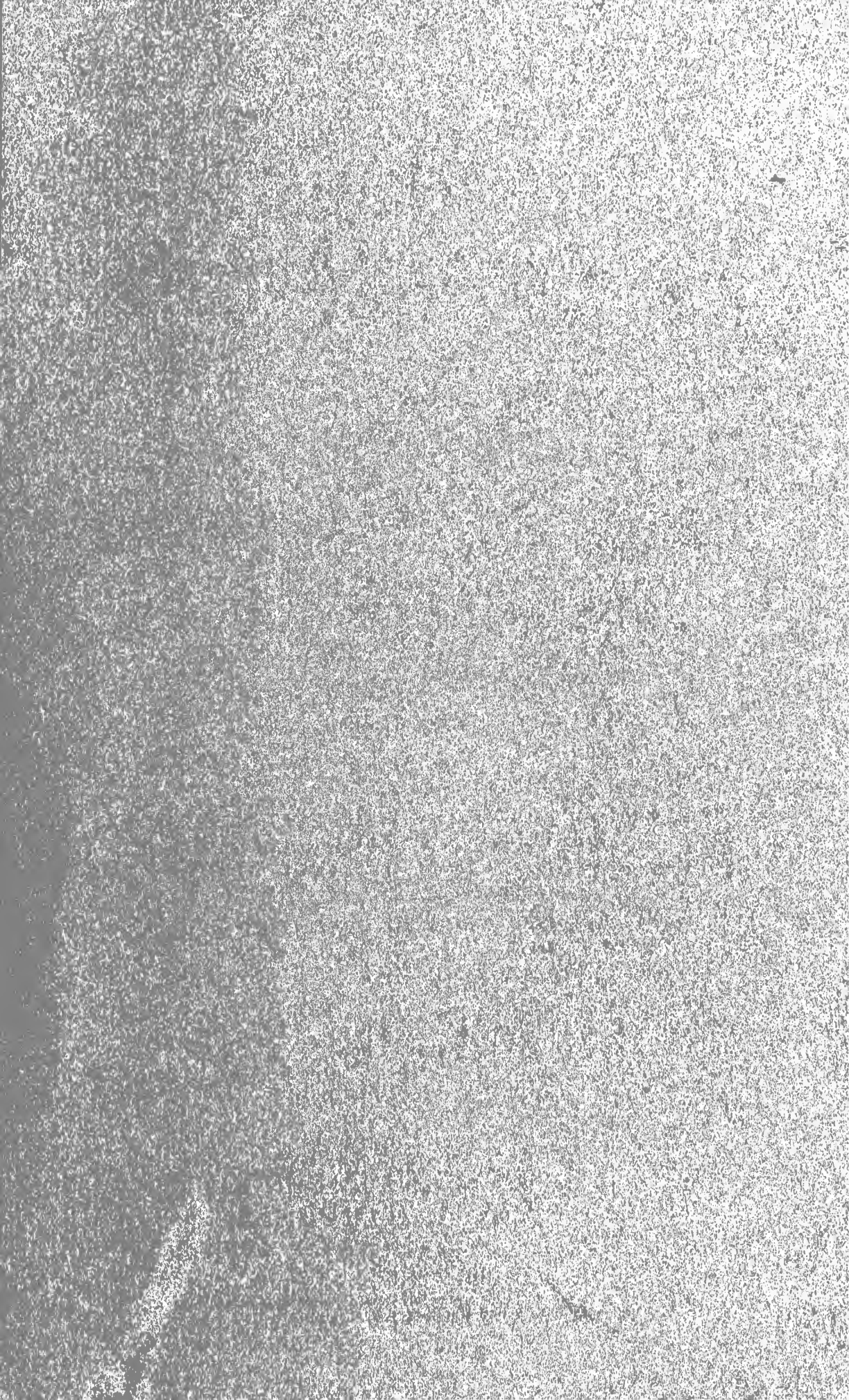
In the Matter of the Petition of THE NORTHWESTERN STEAM-
SHIP COMPANY, LIMITED (a Corporation), Owner of the Steamer
"SANTA CLARA," an American Vessel, for Limitation of Liability.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON,
NORTHERN DIVISION

Brief of Appellant

W. H. BOGLE,
CHARLES P. SPOONER,
IRA A. CAMPBELL,

323-4 Colman Bldg.,
Seattle, Washington. *Proctors for Appellant.*



IN THE
United States
Circuit Court of Appeals
FOR THE NINTH CIRCUIT

THE NORTHWESTERN STEAMSHIP COM-
PANY, LIMITED, Petitioner,

Appellant,

vs.

C. RANSOM, JOHN HANNAFIN, A. ARTAL,
GUST ANDERSON, ERIK JOHNSON, SAM
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J. L. SAGE, JOHN BORLAND, J. R. MORE-
LAND, LOUIS MARTIN, MATT MATTSON,
WILLIAM R. PIERCE, H. A. BROADED, P.
McCORMICK, CHAS. KELLY, FRANK HAN-
NIGAN, ROASLIE PAPES, T. VANDENENK,
F. C. AVERY, A. O. JOHNSON, JOHN SULLI-
VAN, J. ABOHDEN, EMIL LINDQUIST,
FRANK SMITH, HADE ROARK, G. W. BELL,
ROBAK POWELL, PAT REDMOND and EMIL
STANK,

Appellees.

No. 1732

In the Matter of the Petition of THE NORTHWESTERN STEAM-
SHIP COMPANY, LIMITED (a Corporation), Owner of the Steamer
'SANTA CLARA,' an American Vessel, for Limitation of Liability.

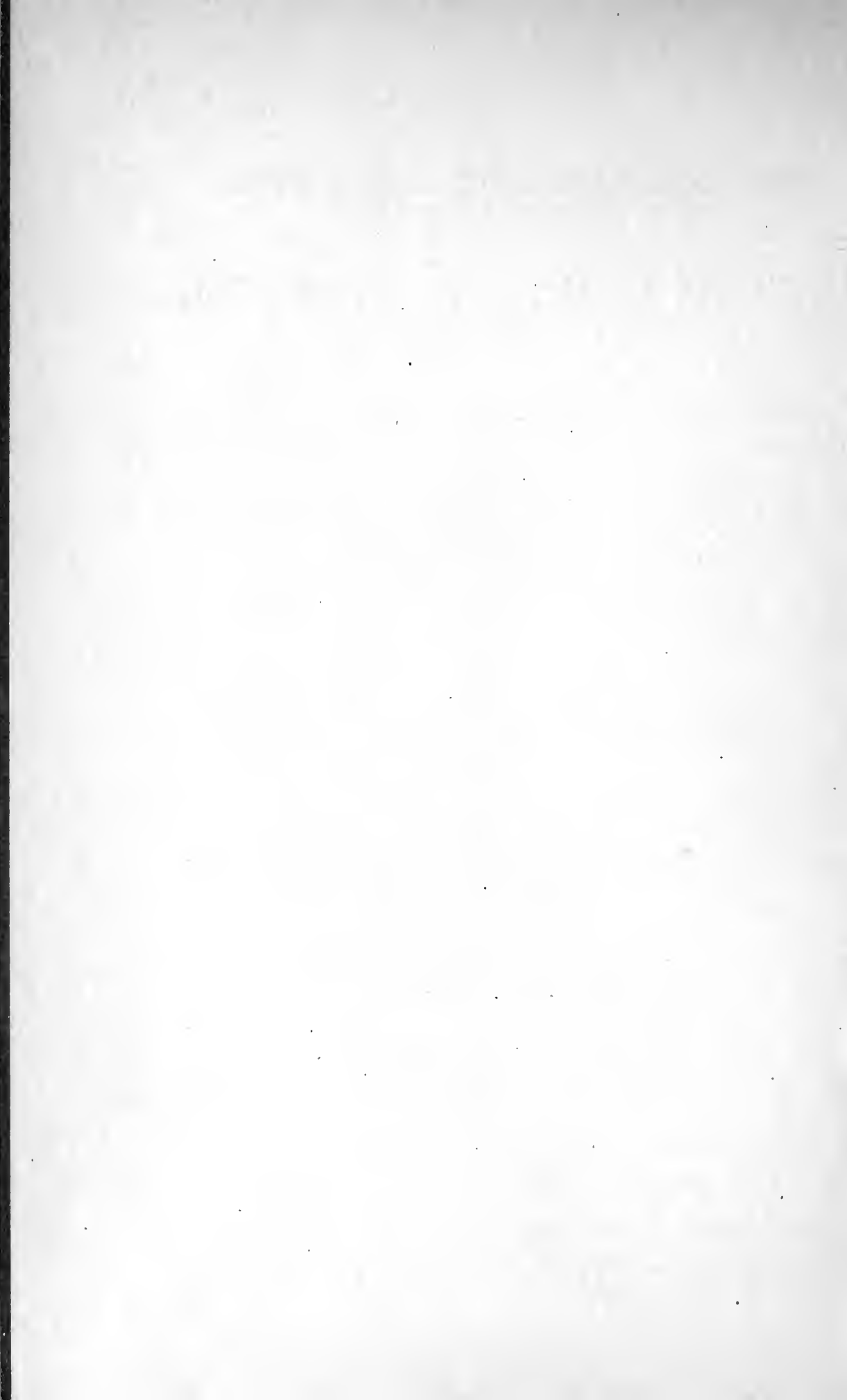
APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON,
NORTHERN DIVISION

Brief of Appellant

W. H. BOGLE,
CHARLES P. SPOONER,
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Proctors for Appellant.

323-4 Colman Bldg.,
Seattle, Washington.



IN THE UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE NINTH CIRCUIT

THE NORTHWESTERN STEAMSHIP COM-
PANY, LIMITED, Petitioner,

Appellant,

vs.

C. RANSOM, JOHN HANNAFIN, A. ARTAL,
GUST ANDERSON, ERIK JOHNSON, SAM
ATKINSON, WILLIAM LUNDBERG, J. L.
PORTER, TOM BERG, JACOB OSTERHOLM,
J. L. SAGE, JOHN BORLAND, J. R. MORE-
LAND, LOUIS MARTIN, MATT MATTSON,
WILLIAM R. PIERCE, H. A. BROADED, P.
McCORMICK, CHAS. KELLY, FRANK HAN-
NIGAN, ROASLIE PAPES, T. VANDENENK,
F. C. AVERY, A. O. JOHNSON, JOHN SULLI-
VAN, J. ABOHDEN, EMIL LINDQUIST,
FRANK SMITH, HADE ROARK, G. W. BELL,
ROBAK POWELL, PAT REDMOND and EMIL
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In the Matter of the Petition of THE NORTHWESTERN STEAM-
SHIP COMPANY, LIMITED (a Corporation), Owner of the Steamer
"SANTA CLARA," an American Vessel, for Limitation of Liability.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASH-
INGTON, NORTHERN DIVISION.

Brief of Appellant

STATEMENT OF CASE.

The steamer "Santa Clara," an American ves-
sel, owned by The Northwestern Steamship Com-
pany, Limited, a corporation, appellant herein, left
Uyak, Alaska, on October 6, 1906, on a voyage to

Seattle. (p. 201.) As shown by her certificate of inspection (Petitioner's Exhibit "H") she was an ocean passenger steamer of 1588 gross tons, and was licensed to carry 123 first-cabin and 237 deck or steerage passengers. After leaving Uyak, the steamer touched at intermediate points and at Seward and Valdez (pp. 8, 224, 295), where other passengers boarded her (pp. 204-5). From Valdez she started on the outside passage, but changed and came inside by way of Juneau (p. 209). On the trip to Seattle she had on board a total of 353 passengers, of which number 230 were steerage (p. 201; Claimant's Exhibit "I," pp. 395-401). The steamer reached Seattle on October 21, 1906, and thereafter, during the months of March and April, 1907, some twenty-five persons claiming to have been passengers on said steamer on said voyage, commenced separate actions against appellant in the Superior Court of the State of Washington for King County, claiming damages in the sum of \$500 each for injuries received and suffering endured on the voyage (pp. 8-9), in one of which actions (wherein Sam Atkinson was plaintiff) a verdict was rendered and judgment entered for \$300. (p. 10.)

Thereafter on March 6, 1908, appellant filed in the United States District Court for the Western

District of Washington, Northern Division, in Admiralty, its petition for limitation of liability (pp. 7-15). Thereupon proctors for appellant gave notice to said Sam Atkinson and those who had filed said actions in said Superior Court, through William Martin and Julius L. Baldwin, their attorneys, that they would, on the 9th day of March, 1908, apply for an order appointing three appraisers and causing due appraisement to be had of said steamer "Santa Clara" and her freight pending, and for a further order restraining the further prosecution of all actions then pending in said Superior Court arising out of claims for failure to properly transport passengers on said steamer "Santa Clara" from ports in Alaska to Seattle in the month of October, 1906. (p. 17.) On said 9th day of March, 1908, said William Martin (proctor for appellees), on behalf of all of the appellees, except Messrs. Porter, Berg, Martin, Hannigan, Papes, Abohden, Bell and Powell, filed objections to the jurisdiction of said court, and a motion to quash (pp. 18-24), which objections and motion were overruled (p. 25), and an order was entered on March 11, 1908, restraining further prosecution of all of said actions which had been commenced and were then pending in said Superior Court (pp. 25-29). The court entered an order

appointing three appraisers, ordering and directing them, after being duly sworn, to make due appraisal of the value of the steamer "Santa Clara" and her freight pending at the termination of her voyage leaving Uyak, Alaska, on October 6, 1906, and arriving at Seattle, Washington, on October 21, 1906. (pp. 29-30.) Notice of said appraisal was given said parties who had commenced said actions in said Superior Court, through William Martin and Julius L. Baldwin, their attorneys (p. 13), and thereafter on March 14, 1908, said appraisers, after having made and subscribed to an oath before the clerk of said United States District Court, made due appraisal of said steamer and her freight pending in accordance with said order, and thereafter, on March 16, 1908, filed in said United States District Court, their appraisal, under oath, wherein they appraised said steamer "Santa Clara" at \$60,000 and her freight pending at \$15,774.15. (pp. 32-35.)

On motion of appellant, pursuant to notice to the aforesaid claimants (pp. 37-8), the court, on March 19, 1908, entered an order approving said appraisal, and directed the petitioner to file a stipulation, with surety, for the payment into said court of the amount of said appraised value of said steamer and her freight pending, or any portion thereof,

whenever the same should be ordered (pp. 38-9). Thereupon said petitioner filed said stipulation with said court (pp. 35-6). Notice of motion for issuance of monition was given said claimants on March 20, 1908 (pp. 41-2), and pursuant thereto and the prayer of the petition, the court, on March 23, 1908, entered an order directing that a monition issue, and be served and posted and published as in said order provided, against all persons claiming damages or injury arising out of said voyage, and citing them to appear before the 29th day of June, 1908, and make due proof of their claims (pp. 44-6). Said monition was duly issued under hand and seal of said court, and, on the 24th day of March, 1908, was served upon William Martin, attorney for said parties who had commenced said actions in said Superior Court (pp. 47-9), and was duly posted and published as in said order provided (pp. 49, 58-61). On the 23rd day of March, 1908, pursuant to motion and notice thereof (pp. 40-1), the court entered an order appointing W. D. Totten a commissioner, before whom all claims should be presented, and directed that proof of said claims and the contest thereof be made before said commissioner as prescribed by the rules and practice of said court, and granting petitioner the right to contest its liability for all or any of said claims inde-

pendently of the limitation of liability claimed, to which order said Sam Atkinson and the other parties to said actions in said Superior Court excepted (pp. 50-2). On March 9, 1908, the court entered an order allowing said Sam Atkinson and the other parties to said actions in the Superior Court to interpose a joint answer (pp. 24-5), and on March 20, 1908, said William Martin served on petitioner a purported joint answer on behalf of certain claimants, now appellees, which answer was verified by William Lundberg, one of said claimants, and was thereafter, on October 26, 1908, filed with the clerk of said United States District Court (pp. 66-70). The petitioner served on William Martin, attorney for said claimants, and said commissioner, and filed with the clerk of said United States District Court, on July 3, 1908, its objections to the allowance of said claims (pp. 55-58). Thereafter, on July 13, 1908, the court entered an interlocutory decree, ordering, adjudging and decreeing that all persons other than appellees, claiming damages or injuries arising out of the voyage of the steamer "Santa Clara" leaving Uyak, Alaska, on the 6th day of October, 1906, and arriving at Seattle, Washington, on the 21st day of October, 1906, be forever barred from presenting any claim or claims in said or any other court for any damages or injuries

arising out of or occurring upon the aforesaid voyage of said steamer (pp. 62-5).

Thereafter proofs of claims for the following claimants, in support of their respective claims, were made before said commissioner, W. D. Totten, viz: F. C. Avery, Hade Roark, Emil Stank, A. O. Johnson, Patrick Redmond and William Lundberg; and proofs were made by said petitioner in support of its petition and its objections to the claims of said claimants, all of which proofs were, on October 26, 1908, returned and filed by said commissioner with said court (p. 74). Thereupon respective proctors were heard in argument, and the court, on March 27, 1909, rendered its memorandum decision on the merits, and thereafter, on April 21, 1909, entered its decree awarding each of said claimants the sum of \$300, and taxed costs in the sum of \$742.75 against the petitioner (pp. 335-9). On April 12, 1909, said court entered an order requiring the petitioner to pay into the registry of the court a sum sufficient to pay the allowance made to each of the claimants, with their costs (pp. 334-5). From said decree this appeal is prosecuted.

In its petition for limitation of liability, appellant set forth that it was the owner and operator of

the steamer "Santa Clara" during its voyage leaving Uyak, Alaska, on October 6, 1906, and terminating at Seattle, Washington, on October 21, 1906; that upon leaving Uyak it had on board a large quantity of freight and a large number of passengers, and thereafter took on board other passengers at the ports of Seward and Valdez and other ports; that thereafter some twenty-five persons claiming to have been passengers on said voyage had commenced separate actions in the Superior Court of Washington for King County, claiming damages in the sum of \$500 each (in one of which actions judgment for \$300 and costs was rendered), alleging: the failure on the part of appellant to provide suitable berths and accommodations; that the quarters were in a damp, cold and unclean and unsanitary condition; that a large number of the passengers were Chinese and Japanese fishermen, quartered in the steerage, and that the steamer was overcrowded and carried a larger number of passengers than allowed by law; that the steamer was insufficiently provisioned, and that the food furnished was prepared and served in an unclean, dirty and slovenly manner, and was unwholesome and unfit for consumption.

Said petition further alleged that the total amount of damages for which suits had been brought

was the sum of \$12,500, and that if liability existed on the part of petitioner it believed that other actions upon other claims, exceeding the value of said steamer and her freight pending at the termination of said voyage might be brought; that the freight pending was the sum of \$15,774.15.

Said petition further alleged that the petitioner did not admit any liability for said alleged damages, and that it desired to contest the same, and claimed exemption under Secs. 4283 to 4285 U. S. Rev. Statutes, on the grounds and for the reasons that said steamer was at all times seaworthy, and well and sufficiently supplied with good, wholesome food and that the same was served at all times during said voyage in clean, well-cooked condition and in quantity sufficient for all the passengers on said steamer; that all of said passengers on said steamer had good, clean berths, except a small number from the port of Valdes, who took passage upon said steamship well knowing that all of the berths were taken and that if they did not desire to go their passage money would be refunded, and well knowing that if they did go they would have to take, and agreed to accept, such accommodations as could be given them; and that for such of said passengers as did not have regular berths equal or better accommodations were furnished them

in the smoking-room, saloon and social halls of said steamer; that the sleeping, dining and other quarters on said steamer were well ventilated and were at all times on said voyage kept in a clean and sanitary condition; that said steamer did not have passengers in excess of the number allowed by her certificate of inspection, and that if said alleged damage was done the same was done, occasioned, or incurred without the privity or knowledge of the petitioner (pp. 7-15).

That in said purported joint answer, appellees, by William Martin, their proctor, alleged as a basis of their claims, in addition to the grounds set forth in said actions in said Superior Court, as appeared in paragraph II of said petition, that at the time of the commencement of said voyage, to-wit: on or about the 6th day of October, 1906, referred to in the petition herein, said steamship "Santa Clara" was unseaworthy, and left said ports of Uyak and Valdes, Alaska, in an unseaworthy condition in the following respects: That said steamship "Santa Clara," on leaving on said voyage from Uyak and Valdes, Alaska, for Seattle, Washington, did not carry a sufficient supply of provisions on board for said voyage for the number of passengers carried on said voyage and vessel, and did not carry any emergency

supply of provisions whatsoever upon said voyage; and that the boilers of said vessel were leaky, weak and defective and unfit to go to sea, and that the hull of said vessel was leaky and taking water, and it was necessary to keep the pumps going on said voyage; and that by reason of the defective conditions of the boilers of said vessel and the want of provisions on board it was necessary for said vessel to put into Juneau, Alaska, to be reprovisioned on said voyage, and to take what is known as the inside passage on account of the condition of said vessel; and that on account thereof said vessel did not arrive in Seattle, Washington, until on or about the 20th day of October; and that the usual time for said voyage was about four to five days; and that, by reason of the facts alleged in paragraph five of the petition and this answer each of these claimants suffered hunger, cold, anxiety and fear upon said voyage and great discomforts from not being provided with a suitable place to sleep; and alleged that they were not provided with any place to sleep on the whole of said voyage, and when they arrived at Seattle were weak, sick and sore from said suffering, cold and hunger, and were damaged in the full sum of \$500.00 each in the premises, and for which damages said claimants asked that they be allowed and

awarded judgment in the full sum of \$500.00 each, except the claim of Sam Atkinson, for which an allowance was asked of the judgment of \$300 and costs entered in said action in said Superior Court.

Said answer further asked that each of said claimants have judgment against the petitioner in the sum of \$500.00 and against the stipulation filed herein for the payment of the same on the limiting of the liability of said vessel, and that said stipulators be decreed to pay said amount with the costs incurred in the Superior Court of the State of Washington for King County and the costs and disbursements herein; and that each of said claimants have such other and further relief as might seem just and proper (pp. 66-70).

The objections of petitioner to the claims of said claimants (appellees) reiterated that portion of the petition, paragraph VIII, setting forth the grounds and reasons for which exemption was claimed, and denied the allegations of claimants' joint answer, except that portion alleging the commencement of the actions in the Superior Court, which was admitted. (pp. 71-73.)

The court, in its memorandum decision, found: That the appraised value of the steamer "Santa

Clara" was more than sufficient to cover all known claims, so that it was unnecessary to discuss the question whether appellant was entitled to exemption from liability in excess of that amount;

That charges were made that the steamer was unseaworthy, and not supplied with sufficient provisions, nor equipped to carry comfortably and safely the number of passengers received for the voyage, all of which the court considered disproved by a fair preponderance of the evidence, except in one particular, viz: the vessel did not have berths or places to sleep for the number of steerage passengers on board;

That he believed petitioner's contention that notice was given to those who came on board at Valdes that there were no berths and that they could go to the company's office and get their money back, was an after-thought—at any rate, inconsistent with the fact the additional passengers were received and carried;

That the ship was overcrowded, and that for the discomfort suffered by the steerage passengers the petitioner was liable;

That the court could not determine that the food was as bad as to constitute a breach of contract;

That the steerage passengers suffered discomfort from the filthy and bad condition of the steerage quarters;

That the fishermen and soldiers filled all the space available for the accommodation of steerage passengers, and that the fishermen were filthy and offensive in their manners, and the Europeans especially so, being intoxicated and turbulent;

That the voyage was rough and there was a great deal of seasickness;

That the court did not consider the sum of \$300 exorbitant compensation for physical suffering caused by a breach of a passenger contract (pp. 322-4).

A decree for the sum of \$300 and interest at 6% from its date was entered in favor of each of said claimants, appellees. (pp. 335-339.)

Costs were taxed in the sum of \$742.45. (pp. 343-4.)

Upon the entry of the decree appellant duly appealed to this court, filed its assignments of error, and it claims that the decree is erroneous in the particulars hereinafter set forth, and relies upon the following specifications of error in the decree (pp. 349-359):

SPECIFICATIONS OF ERROR.

I.

The District Court erred in holding that appellant's steamer did not have accommodations for all passengers received previous to touching at Valdez, for the evidence shows to the contrary. (Assignments of Error 1, pp. 349, 202-222-4, 243-6, 274, 281, 296.)

II.

The District Court erred in holding that appellant did not notify those who came on board its steamer at Valdez that there were no berths untaken, and that they could secure a refund of their passage money at the company's office, for the reason that it is entirely contrary to the evidence. (Assignment of Error 2, pp. 349, 323, 204-205, 224-5, 282-3, 296-7, 300-1, 306.)

III.

The District Court erred in holding that the evidence of notice by appellant to all persons who came on board at Valdez that no berths remained untaken and a refund of their passage could be obtained at the company's office, was an afterthought and not proved by a fair preponderance of the evidence and

inconsistent with the fact additional passengers were taken, for it is contrary to the evidence. (Assignment of Error 3, pp. 349-350, 323, 204-205, 224-5, 282-3, 296-7, 300-1, 306.)

IV.

The District Court erred in holding that the ship was overcrowded and that the steerage passengers were not provided for, for the evidence shows that she did not carry passengers in excess of the number allowed by law and that sufficient accommodations were furnished. (Assignments of Error 4, 9, 10, 17; pp. 350-1, 205, 207-8, 216, 224-227, 261-2, 265-6, 272, 282, 284-5, 292, 297.)

V.

The District Court erred in holding that the steerage passengers suffered any discomfort and that the ship was liable therefor, for the evidence shows that they were given all the privileges of the ship, and that the ship was maintained as clean and orderly as was possible considering the conduct of the passengers. (Assignments of Error 5, 6, 7, 8, 11, 12, 13, 14; pp. 350-1, 100-2, 111-12, 133, 134-5, 138, 187-8, 191, 205, 206-7-8, 216, 221, 224-7, 233-6, 241-2, 247-250, 259, 265, 269-270, 272, 281-3, 284-5, 286-7, 292-3, 297, 298.)

VI.

The District Court erred in holding that claimants (appellees) suffered any damage, for the evidence shows that none of them suffered any physical injury or damage. (Assignments of Error 15, 16, 18, 19, 20, 21; pp. 351, 75, 108-9, 124, 144, 145-6, 161-2, 166, 173-4, 175, 187, 194.)

VII.

The District Court erred in not holding that claimants (appellees) had not filed in said proceedings any proper claims as required by the Admiralty Rules of the U. S. Supreme Court and of the U. S. District Court for the Western District of Washington. (Assignment of Error 22; pp. 47-9, 50-1, 66-70, 77.)

VIII.

The District Court erred in rendering and entering judgment and decree against appellant and its stipulator in favor of appellee, C. Ransom, in the sum of \$300.00 and costs and interest, for the reason that he filed no proper claim and did not testify and there is no evidence showing that he suffered any injury or damage or that his contract of carriage was broken. (Assignments of Error, 23, 15, 16, 17, 18, 19, 20, 21,

61, pp. 352, 47-9, 50-1, 66-70, 77, 204, 215, 221, 224-7, 233-6, 241-2, 247-250, 259, 265, 269-270, 272, 281-3, 284-5, 286-7, 292-3, 296-7, 298, 300-1, 306.)

IX.

The District Court erred in rendering and entering judgment and decree against appellant and its stipulator in favor of appellant, John Hannafin, in the sum of \$300.00 and costs and interest, for the reason that he filed no proper claim and did not testify and there is no evidence showing that he suffered any injury or damage or that his contract of carriage was broken. (Assignments of Error 24, 15, 16, 17, 18, 19, 20, 21, 61, pp. 352, 47-9, 50-1, 66-70, 77.) For additional references to record see Specification VIII.

X.

The District Court erred in rendering and entering judgment and decree against appellant and its stipulator in favor of appellee, A. Artal, in the sum of \$300.00 and costs and interest, for the reason that he filed no proper claim and did not testify and there is no evidence showing that he suffered any injury or damage or that his contract of carriage was broken. Assignments of Error 25, 15, 16, 17, 18, 19, 20,

21, 61, pp. 352, 47-9, 50-1, 66-70, 77.) For additional references to record see Specification VIII.

XI.

The District Court erred in rendering and entering judgment and decree against appellant and its stipulator in favor of appellee, Gust Anderson, in the sum of \$300 and costs and interest, for the reason that he filed no proper claim and did not testify and there is no evidence showing that he suffered any injury or damage or that his contract of carriage was broken. (Assignments of Error 26, 15, 16, 17, 18, 19, 20, 21, 61, pp. 352, 47-9, 50-1, 66-70, 77.) For additional references to record see Specification VIII.

XII.

The District Court erred in rendering and entering judgment and decree against appellant and its stipulator in favor of appellee, Erik Johnson, in the sum of \$300.00 and costs and interest, for the reason that he filed no proper claim and did not testify and there is no evidence showing that he suffered any injury or damage or that his contract of carriage was broken. (Assignments of Error 27, 15, 16, 17, 18, 19, 20, 21, 61, pp. 351, 353, 359, 47-9, 50-1, 66-70, 77.) For additional references to record, see Specification VIII.

XIII.

The District Court erred in rendering and entering judgment and decree against appellant and its stipulator in favor of appellee, J. L. Porter, in the sum of \$300.00 and costs and interest, for the reason that he filed no proper claim and did not testify and there is no evidence showing that he suffered any injury or damage or that his contract of carriage was broken. (Assignments of Error 30, 15, 16, 17, 18, 19, 20, 21, 61, pp. 351, 353, 359, 47-9, 50-1, 66-70, 77.) For additional references to record, see Specification VIII.

XIV.

The District Court erred in rendering and entering judgment and decree against appellant and its stipulator in favor of appellee, Tom Berg, in the sum of \$300.00 and costs and interest, for the reason that he filed no proper claim and did not testify and there is no evidence showing that he suffered any injury or damage or that his contract of carriage was broken. (Assignments of Error 31, 15, 16, 17, 18, 19, 20, 21, 61; pp. 351, 353, 359, 47-9, 50-1, 66-70, 77.) For additional references to record, see Specification VIII.

XV.

The District Court erred in rendering and entering judgment and decree against appellant and its stipulator in favor of appellee, Jacob Osterholm, in the sum of \$300.00 and costs and interest, for the reason that he filed no proper claim and did not testify and there is no evidence showing that he suffered any injury or damages or that his contract of carriage was broken. (Assignments of Error 32, 15, 16, 17, 18, 19, 20, 21, 61; pp. 351, 353, 359, 47-9, 50-1, 66-70, 77.) For additional references to record see Specification VIII.

XVI.

The District Court erred in rendering and entering judgment and decree against appellant and its stipulator in favor of appellee, J. L. Sage, in the sum of \$300.00 and costs and interest, for the reason that he filed no proper claim and did not testify and there is no evidence showing that he suffered any injury or damage or that his contract of carriage was broken. (Assignments of Error 33, 15, 16, 17, 18, 19, 20, 21, 61; pp. 351, 354, 359, 47-9, 50-1, 66-70, 77.) For additional references to record see Specification VIII.

XVII.

The District Court erred in rendering and entering judgment and decree against appellant and its stipulator in favor of appellee, Louis Martin, in the sum of \$300.00 and costs and interest, for the reason that he filed no proper claim and did not testify and there is no evidence showing that he suffered any injury or damage or that his contract of carriage was broken. (Assignments of Error 34, 15, 16, 17, 18, 19, 20, 21, 61; pp. 351, 354, 359, 47-9, 50-1, 66-70, 77.) For additional references to record see Specification VIII.

XVIII.

The District Court erred in rendering and entering judgment and decree against appellant and its stipulator in favor of appellee, J. R. Moreland, in the sum of \$300.00 and costs and interest, for the reason that he filed no proper claim and did not testify and there is no evidence showing that he suffered any injury or damage or that his contract of carriage was broken. (Assignments of Error 35, 15, 16, 17, 18, 19, 20, 21, 61; pp. 351, 354, 359, 47-9, 50-1, 66-70, 77.) For additional references to record, see Specification VIII.

XIX.

The District Court erred in rendering and entering judgment and decree against appellant and its stipulator in favor of appellee, Louis Martin, in the sum of \$300.00 and costs and interest, for the reason that he filed no proper claim and did not testify, and there is no evidence showing that he suffered any injury or damage or that his contract of carriage was broken. (Assignments of Error 36, 15, 16, 17, 18, 19, 20, 21, 61; pp. 351, 354, 359, 47-9, 50-1, 66-70, 77.) For additional references to record see Specification VIII.

XX.

The District Court erred in rendering and entering judgment and decree against appellant and its stipulator in favor of appellee, Matt Mattson, in the sum of \$300.00 and costs and interest, for the reason that he filed no proper claim and did not testify and there is no evidence showing that he suffered any injury or damage or that his contract of carriage was broken. (Assignments of Error 37, 15, 16, 17, 18, 19, 20, 21, 61; pp. 351, 354, 359, 47-9, 50-1, 66-70, 77.) For additional references to record see Specification VIII.

XXI.

The District Court erred in rendering and entering judgment and decree against appellant and its stipulator in favor of appellee, William R. Pierce, in the sum of \$300.00 and costs and interest, for the reason that he filed no proper claim and did not testify, and there is no evidence showing that he suffered any injury or damage or that his contract of carriage was broken. (Assignments of Error 38, 15, 16, 17, 18, 19, 20, 21, 61; pp. 351, 355, 359, 47-9, 50-1, 66-70, 77.) For additional references to record see Specification VIII.

XXII.

The District Court erred in rendering and entering judgment and decree against appellant and its stipulator in favor of appellee, H. A. Broaded, in the sum of \$300.00 and costs and interest, for the reason that he filed no proper claim and did not testify, and there is no evidence showing that he suffered any injury or damage or that his contract of carriage was broken. (Assignments of Error, 39, 15, 16, 17, 18, 19, 20, 21, 61; pp. 351, 355, 359, 47-9, 50-1, 66-70, 77.) For additional references to record see Specification VIII.

XXIII.

The District Court erred in rendering and entering judgment and decree against appellant and its stipulator in favor of appellee, P. McCormick, in the sum of \$300.00 and costs and interest, for the reason that he filed no proper claim and did not testify, and there is no evidence showing that he suffered any injury or damage or that his contract of carriage was broken. (Assignments of Error 40, 15, 16, 17, 18, 19, 20, 21, 61; pp. 351, 355, 359, 47-9, 50-1, 66-70, 77.) For additional references to record see Specification VIII.

XXIV.

The District Court erred in rendering and entering judgment and decree against appellant and its stipulator in favor of appellee, Chas. Kelley, in the sum of \$300.00 and costs and interest, for the reason that he filed no proper claim and did not testify, and there is no evidence showing that he suffered any injury or damage or that his contract of carriage was broken. (Assignments of Error 41, 15, 16, 17, 18, 19, 20, 21, 61; pp. 351, 355, 359, 47-9, 50-1, 66-70, 77.) For additional references to record see Specification VIII.

XXV.

The District Court erred in rendering and entering judgment and decree against appellant and its stipulator in favor of appellee, Frank Hannigan, in the sum of \$300.00 and costs and interest, for the reason that he filed no proper claim and did not testify, and there is no evidence showing that he suffered any injury or damage or that his contract of carriage was broken. (Assignments of Error 42, 15, 16, 17, 18, 19, 20, 21, 61; pp. 351, 355, 359, 47-9, 50-1, 66-70, 77.) For additional references to record see Specification VIII.

XXVI.

The District Court erred in rendering and entering judgment and decree against appellant and its stipulator in favor of appellee, Roaslie Papes, in the sum of \$300.00 and costs and interest, for the reason that he filed no proper claim and did not testify, and there is no evidence showing that he suffered any injury or damage or that his contract of carriage was broken. (Assignments of Error 43, 15, 16, 17, 18, 19, 20, 21, 61; pp. 351, 355, 359, 47-9, 50-1, 66-70, 77.) For additional references to record see Specification VIII.

XXVII.

The District Court erred in rendering and entering judgment and decree against appellant and its stipulator in favor of appellee, T. Vandenenk, in the sum of \$300.00 and costs and interest, for the reason that he filed no proper claim and did not testify, and there is no evidence showing that he suffered any injury or damage or that his contract of carriage was broken. (Assignments of Error 44, 15, 16, 17, 18, 19, 20, 21, 61; pp. 351, 356, 359, 47-9, 50-1, 66-70, 77.) For additional references to record see Specification VIII.

XXVIII.

The District Court erred in rendering and entering judgment and decree against appellant and its stipulator in favor of appellee, John Sullivan, in the sum of \$300.00 and costs and interest, for the reason that he filed no proper claim and did not testify, and there is no evidence showing that he suffered any injury or damage or that his contract of carriage was broken. (Assignments of Error 47, 15, 16, 17, 18, 19, 20, 21, 61; pp. 351, 356, 359, 47-9, 50-1, 66-70, 77.) For additional references to record see Specification VIII.

XXIX.

The District Court erred in rendering and entering judgment and decree against appellant and its stipulator in favor of appellee, J. A. Abohden, in the sum of \$300.00 and costs and interest, for the reason that he filed no proper claim and did not testify, and there is no evidence showing that he suffered any injury or damage or that his contract of carriage was broken. (Assignments of Error 48, 15, 16, 17, 18, 19, 20, 21, 61; pp. 351, 356, 359, 47-9, 50-1, 66-70, 77.) For additional references to record see Specification VIII.

XXX.

The District Court erred in rendering and entering judgment and decree against appellant and its stipulator in favor of appellee, Emil Lindquist, in the sum of \$300.00 and costs and interest, for the reason that he filed no proper claim and did not testify, and there is no evidence showing that he suffered any injury or damage or that his contract of carriage was broken. (Assignments of Error 49, 15, 16, 17, 18, 19, 20, 21, 61; pp. 351, 357, 359, 47-9, 50-1, 66-70, 77.) For additional references to record see Specification VIII.

XXXI.

The District Court erred in rendering and entering judgment and decree against appellant and its stipulator in favor of appellee, Frank Smith, in the sum of \$300.00 and costs and interest, for the reason that he filed no proper claim and did not testify, and there is no evidence showing that he suffered any injury or damage or that his contract of carriage was broken. (Assignments of Error 50, 15, 16, 17, 18, 19, 20, 21, 61; pp. 351, 357, 359, 47-9, 50-1, 66-70, 77.) For additional references to record see Specification VIII.

XXXII.

The District Court erred in rendering and entering judgment and decree against appellant and its stipulator in favor of appellee, G. W. Bell, in the sum of \$300.00 and costs and interest, for the reason that he filed no proper claim and did not testify, and there is no evidence showing that he suffered any injury or damage or that his contract of carriage was broken. (Assignments of Error 52, 15, 16, 17, 18, 19, 20, 21, 61; pp. 351, 357, 359, 47-9, 50-1, 66-70, 77.) For additional references to record see Specification VIII.

XXXIII.

The District Court erred in rendering and entering judgment and decree against appellant and its stipulator in favor of appellee, Robak Powell, in the sum of \$300.00 and costs and interest, for the reason that he filed no proper claim and did not testify, and there is no evidence showing that he suffered any injury or damage or that his contract of carriage was broken. (Assignments of Error 53, 15, 16, 17, 18, 19, 20, 21, 61; pp. 351, 357, 359, 47-9, 50-1, 66-70, 77.) For additional references to record see Specification VIII.

XXXIV.

The District Court erred in rendering and entering judgment and decree against appellant and its stipulator in favor of appellee, F. C. Avery, in the sum of \$300.00 and costs and interest, for the reason that he filed no proper claim and the evidence does not show that he suffered any injury or damage or that his contract of carriage was broken. (Assignments of Error 45, 15, 16, 17, 18, 19, 20, 21, 61; p. 351, 357, 359, 47-9, 50-1, 66-70, 77, 100-2, 108-9 110-1, 112, 114, 204-8, 209, 216, 224-7, 233-6, 241-2, 247-250, 259, 265, 269-270, 272, 281-3, 284-5, 286-7, 292-3, 296-7, 298, 300-1, 306.)

XXXV.

The District Court erred in rendering and entering judgment and decree against appellant and its stipulator in favor of appellee, Hade Roark, in the sum of \$300.00 and costs and interest, for the reason that he filed no proper claim and the evidence does not show that he suffered any injury or damage or that his contract of carriage was broken. (Assignments of Error 51, 15, 16, 17, 18, 19, 20, 21, 61; pp. 351, 357, 359, 47-9, 50-1, 66-70, 77, 124, 133-5, 137-8, 204-8, 209, 216, 224-7, 233-6, 241-2, 247-250, 259, 265, 269-270, 272, 281-3, 284-5, 286-7, 292-3, 296-7, 298, 300-1, 306.)

XXXVI.

The District Court erred in rendering and entering judgment and decree against appellant and its stipulator in favor of appellee, William Lundberg, in the sum of \$300.00 and costs and interest, for the reason that he filed no proper claim and the evidence does not show that he suffered any injury or damage or that his contract of carriage was broken. (Assignments of Error 29, 15, 16, 17, 18, 19, 20, 21, 61; pp. 351, 353, 359, 47-9, 50-1, 66-70, 77, 191, 194, 195, 204-8, 209, 216, 224-7, 233-6, 241-2, 247-250, 259, 265,

269-270, 272, 281-3, 284-5, 286-7, 292-3, 296-7, 298, 300-1, 306.)

XXXVII.

The District Court erred in rendering and entering judgment and decree against appellant and its stipulator in favor of appellee, A. O. Johnson, in the sum of \$300.00 and costs and interest, for the reason that he filed no proper claim and the evidence does not show that he suffered any injury or damage or that his contract of carriage was broken. (Assignments of Error 46, 15, 16, 17, 18, 19, 20, 21, 61; pp. 351, 356, 359, 47-9, 50-1, 66-70, 77, 149, 151, 156, 160, 161-2, 166, 204-8, 209, 216, 224-7, 233-6, 241-2, 247-250, 259, 265, 269-270, 272, 281-3, 284-5, 286-7, 292-3, 296-7, 298, 300-1, 306.)

XXXVIII.

The District Court erred in rendering and entering judgment and decree against appellant and its stipulator in favor of appellee, Pat Redmond, in the sum of \$300.00 and costs and interest, for the reason that he filed no proper claim and the evidence does not show that he suffered any injury or damage or that his contract of carriage was broken. (Assignments of Error 54, 15, 16, 17, 18, 19, 20, 21, 61; pp. 351, 358, 359, 47-9, 50-1, 66-70, 77, 173-4, 182, 187-8,

204-8, 209, 216, 224-7, 233-6, 241-2, 247-250, 259, 265, 269-270, 272, 281-3, 284-5, 286-7, 292-3, 296-7, 298, 300-1, 306.)

XXXIX.

The District Court erred in rendering and entering judgment and decree against appellant and its stipulator in favor of appellee, Emil Stank, in the sum of \$300.00 and costs and interest, for the reason that he filed no proper claim and the evidence does not show that he suffered any injury or damage or that his contract of carriage was broken. (Assignments of Error 55, 15, 16, 17, 18, 19, 20, 21, 61; pp. 351, 358, 359, 47-9, 50-1, 66-70, 77, 144, 145-6, 204-8, 209, 216, 219, 224-7, 233-6, 241-2, 247-250, 259, 265, 269-270, 272, 281-3, 284-5, 286-7, 292-3, 296-7, 298, 300-1, 306.)

XL.

The District Court erred in taxing costs against appellant, and entering judgment and decree thereon, for the reason that the evidence does not show appellees to have suffered any injury or damage or that their contracts of carriage were broken, entitling them to judgment against appellant. (Assignment of Error 57; pp. 358, 335, 343, 75, 108-9, 124, 144, 145-6, 161-2, 166, 173-4, 175, 187, 194.)

XLI.

The District Court erred in taxing the sum of \$10.00 docket fee as costs against appellant, and in entering judgment and decree thereon, for the reason that the evidence does not show appellees to have suffered any injury or damage or that their contract of carriage was broken, entitling them to judgment against appellant; nor did appellees, except Messrs. Avery, Roark, Stank, A. O. Johnson, Redmond and Lundberg, appear in said proceeding and make any proof of their alleged claims. (Assignments of Error 58; pp. 358, 335, 343, 75, 108-9, 124, 144, 145-6, 161-2, 166, 173-4, 175, 187, 194.)

XLII.

The District Court erred in taxing as costs against appellant the sum of \$100.00 costs for filing 25 complaints by appellees in the Superior Court of the State of Washington for King County, for the reason that the evidence does not show appellees to have suffered any injury or damage, or that their contracts were broken, entitling them to judgment against appellant. (Assignment of Error 59; pp. 359, 335, 343, 75, 100-2, 108-9, 124, 133, 134-5, 138, 144, 145-6, 161-2, 166, 173-4, 175, 187-8, 191, 194, 204-5-6-7-8, 216, 221, 224-7, 233-6, 241-2, 247-250, 259, 265, 269-270, 272, 281-3, 284-5, 286-7, 292-3, 296-7, 298, 300-1, 306.)

ARGUMENT.

I.

Assignment of Error 1, Specification 1, goes to the question of the sufficiency of accommodations for all passengers received prior to the vessel reaching Valdez. Of the six claimants who testified all but Redmond and Lundberg took passage at Valdez, the latter two boarding the steamer at Seward. The former says that he looked over the berths and they were all filled in, but did not say anything to the officers on the vessel until they left Valdez, as "he didn't get a chance." (170.) The latter said that he asked for a berth when he went aboard; "he guessed it was some of the officers, he couldn't remember" until it was suggested to him by one of proctor's leading questions (190).

As against such testimony are the positive statements of the officers in charge. The purser says that there were sufficient berths for all steerage passengers taking passage at Seward (202), and Mr. McKevitt, the steerage steward, says that two or three getting on at Seward complained that they had no berths, and that he secured berths for all who so com-

plained (222-3). According to the custom the steerage passengers selected their own berths (222). He knew of no one not having a berth from Seward (223). The chief steward also states that there were sufficient berths for all Seward passengers (281), as does also the captain (296).

We respectfully submit that a fair preponderance of the evidence shows that there were sufficient accommodations for all taking passage prior to Valdez, and that the testimony of one who didn't ask for a berth and of another who couldn't remember whom he did ask, ought not to justify a finding that the accommodations were insufficient at that time.

II.

Assignments of Error 2 and 3, Specifications 2 and 3, may be properly considered together, as they both touch the question of notice given the steerage passengers from Valdez. The District Court, in its memorandum decision, said:

“A claim is made that the vessel had accommodations for all the passengers received previous to touching at Valdez and that all those who came on board at that place were notified that no berths remained untaken and that they could go to the company's office and take back the money paid for their tickets. *This, I believe, is an afterthought; at any*

rate, it has not been proved by a fair preponderance of the evidence and is inconsistent with the fact that additional passengers were received and carried.”

Four steerage passengers who took passage at Valdez, Avery, Roark, Stank and Johnson, said that *they did not receive any such notice*. On the other hand, the purser, chief steward and steerage steward said the notice was given. The purser (204-5) says that he personally went around among the passengers on board the ship, together with the chief steward and the steerage steward advising all Valdez passengers who had embarked that they didn't have sufficient accommodations for them, and to return to the company's office and they would be refunded the amount of their ticket (204-5). The steerage steward testified that the purser gave him orders to so notify those getting on at Valdez, and that he personally gave such notice (224-5). The chief steward said that the quartermaster had orders not to let any more aboard, but that the passengers jumped over the rail, and after the quartermaster found they were aboard he, the chief steward, with the purser and the waiters, went through the steerage and all over the ship and told the passengers if any of them hadn't berths now was the time to get ashore and have their money refunded to them (282). The master testi-

fied that he gave the purser orders to give the notice in question (300-1, 306).

The court said that it believed this to be an *afterthought*. In other words, that a year and a half afterwards these four men appeared in court and stultified themselves by swearing to a falsehood. Is such a conclusion justified? Has it any basis in the record? It must not be forgotten that the testimony of all the witnesses was taken before a commissioner and was returned by him into court in typewritten form, and that the District Court at no time saw any of the witnesses and had no opportunity to observe their demeanor on the stand. The court had before it nothing more than appears before this court, and we are at a loss to understand what there is in the record to justify a conclusion that such testimony, such defense, was an afterthought. On the one hand the court had four witnesses who had material interests in their cases—seeking damages—for the very condition the notice was given to avoid; on the other hand were four officers of the steamer who had no interest. It might be true that the four claimants did not hear the notice given, but does that prove it was not given? Where are all the other witnesses proctor claims to represent? Is it reasonable to say, because four out of all the passengers did not hear

the notice given, that it was not given, when four equally as reputable men, so far as the record discloses, say that they personally gave it? How can the court say that four testified falsely and four truly, when it did not see or hear the witnesses? The four officers whose testimony is so challenged did not attempt to deny that all steerage berths were filled on reaching Valdez, and in that respect the court admits they told the truth. Wherein is there anything in the record that would account for a motive or incentive to such falsehood? We have failed to find it.

The giving of such notice was not inconsistent with the fact that the passengers were received and carried. Why, on the contrary, that is the very condition with which it is consistent! If they did not desire to go they could get their money refunded. Was there any reason for their not staying? The record shows the four claimants to have been working men desirous of getting out of Alaska, and yet the fact was that there was no other ship coming down for a month or more, the Portland and Santa Ana both having gone on the rocks (225, 274). Under these circumstances it was not unnatural that the men should express, as they said, their determination to go anyway (205, 225, 283, 301).

We cannot but feel that the District Court erred in finding that the notice in question was not given or proved by a fair preponderance of the evidence, and most grievously erred in finding the evidence of it to be an afterthought.

III.

Assignments of Error 4, 9, 10, 17, Specification of Error 4, go to the error of the District Court relating to overcrowding. It appears from the testimony of the purser (201) and from the record of appellant (Exhibit I, pp. 395-401), that the "Santa Clara" had on board, when she left on her downward voyage, 353 passengers, of whom 230 were steerage. Her certificate of inspection (Exhibit H) permitted her to carry 360 passengers, of whom 237 were to be deck or steerage passengers. It is conclusive, therefore, that she was within her licensed number and was not acting in violation of the law.

Three hundred and fifty-three are admittedly a large number of people when gathered together in one body, but except as respects the berthing of the six persons who appeared in this proceeding and testified to having secured no berths, there is no evidence that the ship was overcrowded in the sense that

should hold appellant liable in law. The U. S. steamboat inspectors are the officials of government who have immediate control of the licensing of passenger vessels, and they are presumptively qualified to pass judgment on the carrying capacity of the vessels under their control, and having given their official consent to a limit of 360 passengers, it cannot be said that the vessel was acting in violation of law when she received and carried a lesser number.

Proctors for claimants filed herein an "answer" sworn to by one person, without a showing of any kind that either such claimant or proctors were authorized to complain in behalf of the entire thirty-three. And of the thirty-three, but six appeared and testified in support of any claim. These six claimed to have had no berths, and except for that one deficiency, there is no evidence of any overcrowding of the steamer. As appears from the record, these men, while traveling as steerage, were given unusual privileges—practically those of first-class passengers, the full run of the ship, including the use of first-class toilets, social hall, saloon, smoking room and all deck space (100-1, 109, 111, 134-5, 187-8, 207, 226-7, 272, 284-5, 297). The question before this court is one of damages, among other things, for overcrowding of the vessel, and yet the testimony of the six, as has

been pointed out, shows that the privileges aforementioned were enjoyed by each of them. It is further significant that before the steamer sailed they knew of the conditions and voluntarily took passage with knowledge of the approximate number on board. Mr. Avery testified that he found all berths full on boarding the ship (96); Roach was aboard for an hour before the ship sailed (128-9); Stank said that he walked all over and could see no empty berths (147); Johnson said the berths were all filled with men or baggage in the afternoon before sailing (160); Lundberg felt it necessary to ask for a berth when he went aboard at Seward (190).

So that aside from the question of liability for not furnishing the six berths, it is apparent that the six men took passage with full knowledge of the passengers aboard. Of the knowledge of the remaining twenty-six, the record discloses nothing. With this fact and the further one that the steamer was within her licensed number, there is no ground for complaint in that particular. These men were laboring men anxious to get out of Alaska, and they embraced the only immediate opportunity, for the record shows that there was no other ship coming down for a considerable period, as both the Portland and the Santa Ana had been disabled (225).

We, therefore, respectfully submit that the court erred.

IV.

Assignments of Error 5, 6, 7, 8, 11, 12, 13, 14, Specification of Errors, are properly considered together, for they all concern the alleged discomfort of the steerage passengers from the condition of the steerage quarters and conduct of the passengers. It is to be admitted that the record shows great contradiction in several particulars. In one respect, however, the testimony of the six claimants and of the officers and of the crew are largely in accord—that of the personal conduct of many of the steerage passengers.

A considerable number of the steerage passengers were fishermen (European, Chinese and Japanese) who boarded the steamer at Uyak. As appears from Exhibit "G" (229-232), the forward steerage was divided into two compartments by a bulkhead running fore and aft from the after end of the steerage to the hatch at the forward end. The Chinese and Japanese were quartered on the port side, and the white passengers on the starboard. There is no law, of which appellant is aware, which makes it unlawful to thus carry Orientals and Caucasians in

the same steerage. No complaint is made of the Chinese, except their presence, and their passing through the other part of the steerage. Great effort was made by proctors for claimants to magnify the "awfulness" of thus quartering Orientals and Caucasians together, but it is not to be forgotten that those passengers were received on board at Uyak prior to the time that any of the claimants took passage, and when the latter boarded the steamer they did so with full knowledge of that fact. This being true, there is no legitimate ground of complaint in that respect.

The Chinese and Japanese did not interfere with the white passengers or their quarters, except that in making their tea in the kitchen they passed along the aisle between the bunks on the starboard side (232, 290), and across the hatch in going to the closet (88). They were fed entirely separate (211). There is no evidence that the Orientals did not conduct themselves with proper deportment.

But as much cannot be said of the white men. At the time the steamer left Seward many of them came aboard in a drunken, quarreling condition, making it impossible for the officers to control them (221, 248, 281), and this continued on the way down (247).

The principal ground of complaint, however, goes to the condition of the steerage. The six claimants who testified maintained that the floor of the steerage was filthy and unclean from vomit and the overflow of the toilet, and that the ventilation was bad. In their efforts to emphasize this, they claimed that nothing was done to remedy the condition until the day before the arrival of the steamer in port, but it appears that these men were on deck the greater part of the day and admit that they knew nothing of what was done in their absence. Mr. Avery admitted that he could not positively testify that no effort was made while he was absent (112); Roark said that he could not say whether they were cleaned or not while he was on deck (137).

It is admitted by all witnesses that the voyage from Seward until the inside passage was reached was rough and a great many of the steerage passengers were seasick, with the natural results that usually follow that condition (110-1, 114, 144, 149, 152, 164, 171, 197). As against their testimony are the positive statements of the officers that all possible was done to maintain the steerage in as clean and orderly a condition as possible. Mr. McKevitt, the steerage steward, testified that the effect of the sea after leaving Valdez was to cause vomiting and sea-

sickness (233, 248-9), and that he cleaned the steerage several times a day, every possible time that he saw it (234-5, 239); that they washed the deck down with the hose (236); that they strapped small skits about the steerage, some of which were used by the passengers and some would make no attempt to do so (233, 248-9). Mr. Dillon, the chief steward, substantiated this by saying that they experienced a rough sea from Seward to Valdez (282), and that the steerage passengers vomited on the deck wherever it was convenient for them (285). He, too, said that the steerage was constantly cleaned and washed down with the hose by the sailors, and that the steerage steward, a man of 25 years' experience, kept it in good shape (286-7). The master also testified that they had very rough weather, and that many on board were seasick, and that while they had rough weather the steerage was nasty, for the men would lie in their berths and vomit on the deck (248-9); that everything possible was done to keep it clean; it was swept and mopped, and after they got into better weather everything was washed out (298-9). In this the officers were corroborated by a passenger, Holland, who frequently passed through the steerage. He saw the men cleaning it, and often they used the hose (270-1).

That the weather was bad and the sea rough until they got into the inside passage, is not to be denied, and under those conditions, it is not unreasonable to believe that many of the passengers were sick. They were not helpless women or irresponsible children, but laboring men from Alaska, capable of observing some rule of decency and helping themselves. But on the contrary they responded to the demands of nausea with utter disregard to their fellow passengers or the steamer or its employees. The latter all say that they did everything they could to keep it clean, and if it was not done to the entire satisfaction of a passenger seeking damages, it would not be surprising. But strange is it not, if reasonable effort was not made by the crew to keep the steerage clean, that some of the 230 passengers, other than the six who testified, did not appear and corroborate the complaint. Human endeavor has its limits, and even though all was done by the steerage crew that could be done, doubtless any man who was looking for damages, could portray a condition resulting from nausea that would be sickening in its details. None of the witnesses seemed to have suffered greatly on its account. Mr. Johnson said that he felt pretty sick from the time he left Valdez until he reached Juneau, and from then on, in the smoother water, he was better

(161-2). So with Stank, it was during the rough weather that he was ill, and coming down from Juneau he was better (145-6).

Complaint was also made of the ventilation. All admit that the air in the steerage was due to the condition of weather the steamer was experiencing. In the day time the tarpaulin was off the hatch, but the wind came down and it was cold, and after midnight the crew put it on (143-4). It was impossible to open the ports because the spray from the sea came in, but at times it was cool enough (173). The testimony of Mr. McKevitt was that the steerage was ventilated by the hatchway and ventilator forward, and by opening the port lights, but that owing to the sea, this could not be done until the inside passage was reached. Here again was a condition over which the crew had no control and yet they did the best that they could under conditions that prevailed. So with the dog, about which so much was said. The mate would take it up on deck (242) and some one else would bring him back (243, 138-9). And is it reasonable that any human being would do as Roark testified to on page 133, wherein he says that the dog was sick, and his refuse left on the deck, and yet he slept within four feet of it? Is it possible that such a man could suffer from it?

The toilet was undoubtedly clogged and may have overflowed. This was due to an empty salmon can stolen from the cargo, being thrown in it. Mr. McKevitt went over the side to get the can out. The toilet constantly had running water in it, and was at no time shut off, except while the can was being removed. (241-2.) The six claimants suffered no inconvenience from this, for as has been previously pointed out, they had the free run of the ship and used the first-class toilets.

A review of the testimony cannot help but impress anyone with the fact that a great amount of seasickness, with its nauseating effects, prevailed while the steamer was making the outside passage, a condition that no one but the person himself could prevent, and that every reasonable effort was made by the crew to maintain the steerage in as clean a condition as was possible. Is it reasonable to believe that because these six witnesses, who admitted they remained on deck except when actually sleeping below, did not see the steerage cleaned, it was in fact not cleaned? Is it reasonable to believe that the officers of the steamer who lived and worked aboard the ship would allow such condition to exist without attempting to remedy it? The officers are all reputable men,

some of them confined in their employment to caring for the steerage, and are they to be believed in their statements of what they personally did and caused to be done, or is the court to find them falsifying, and that a man who was willing to admit what Roark did (133) was the truth sayer? We cannot believe so. The record establishes that all reasonable diligence was used to care for the steerage, and no more the law requires. A carrier by water is not an insurer of its passengers.

We respectfully submit that the court erred in the particulars set forth in the assignments and specifications.

V.

Appellant assigns as error the holding of the District Court that claimants suffered damage, for the reason that the evidence shows that none of them suffered any physical injury or damage. (Assignments of Error 15, 16, 18, 19, 20, 21, Specification of Error 6.)

Damages suffered are necessary as a basis for an award such as the District Court made in this case, but, as appellant views the evidence, there is a complete failure of any such showing.

Mr. Avery testified that "he had rheumatism as a result of his experience on the voyage; that it was a month after he returned to Seattle before he felt like doing anything, but that at no time did he consult a physician; in fact, didn't think it was necessary, and made no attempt to get any work." (208-9.) This is the sum total of his evidence as to damages suffered. He had been earning in Alaska \$75 a month.

Mr. Roark testified that "he didn't feel very good all the way down, but that he didn't feel so bad either, to speak of." And, in response to Proctor's further query, he said that "he was not feeling very good when he got off; was worn out from sleep and something to eat, you might say, and that his stomach was out of whack from some reason or other" (124). Does that show a personal damage entitling him to an award of \$300.00? Is there a word in it showing that he was the victim of any privation or damage? If so, we fall short of a proper comprehension of the basis of damage the law requires. It is to be noted that the court did not find the food improper or insufficient and no appeal was taken therefrom.

Mr. Stank was "pretty nearly always sick until Juneau was reached, and then was better" (144-6). This, the court will re-call, was during the voyage

from Valdez to Juneau, during which the rough weather and sea was encountered, and during which period a good many of the passengers were seasick. There can be no denial that his case was one of plain seasickness, and yet the District Court made no distinction and also awarded him the \$300.00. We are at a loss to believe that appellant is liable for the seasickness of its passengers, or that Mr. Stank has made any showing tending to justify the award made to him.

Mr. Johnson also "felt pretty sick from the time he left Valdez until he reached Juneau, and from then on, in the smooth water, he felt better" (161-2). This, again, shows on its face that it was but seasickness, and the fact that "he got three or four meals off the boat at Juneau and then felt better," does not establish a case of suffering or damage justifying the award made him. As to his health on arrival at Seattle, he was pretty shaky (156). Isn't that the result of seasickness? We fail to find in his testimony any injury or damage for which the District Court could hold appellant liable. His principal trouble seems to have been from "nausea of the sea," couldn't eat the food, and yet the District Court did not find the food other than the law required to be furnished steerage passengers. A significant fact

appears in connection with his ailment, and that is that he did not have with him any blankets, as admittedly was required of all steerage passengers.

Surely one boarding a steamer without the bedding required, who thereby necessarily contemplated sleeping in his clothes, and who was seasick in the course of the rough weather, does not present a case justifying the award made him.

Mr. Redmond testified:

Q. Did you suffer any on that trip from loss of sleep?

A. I did suffer quite a lot (173).

Q. Describe it as well as you can to the commissioner?

A. On account of not being able to sleep on the hatches because these Chinamen were gambling all the time and the hatch would be full of them, both the Chinamen and the Japs would be gambling all the time and the hatch was full of them and it was all right there on the one hatch.

And then he added, "of course you could sleep all the next day for that matter" (173-4).

Proctor was not satisfied, so immediately asked him:

Q. Now, I don't think you described your suffering from loss of sleep and hunger. Now go ahead and describe it as far as you can?

A. Well, I can't describe it any better than that. I had to sleep on the hatch and you know what a man has to suffer; you have to use your own blankets and have everyone jumping over them and tearing them and throwing them around.

We submit that Proctor was right when he said that he had not described any suffering, nor did he do so. Is there a word of complaint as to his condition on arrival at destination? We fail to find it in the record. Surely such testimony can not in the eye of the law constitute a basis of damage, let alone the award made.

And lastly, Mr. Lundberg:

Q. Did you suffer any from hunger?

A. Yes, I didn't get half enough to eat either of what was there.

Q. Did you suffer any ill effects from eating what they did have?

(Objected to as leading.)

A. Yes. I got sick alright.

And that is all there is in his testimony as to any ill effects of the voyage. Not a word as to his condition upon arrival at Seattle. It is to be noted that his evidence relates solely to the food, which was not condemned by the District Court, and which question is not before this court.

In the face of such testimony what did the District Court do? Those six men were the only ones who testified, and the foregoing is the only evidence of special damage. Upon such testimony, the court entered a judgment in favor of all 33 of the alleged claimants, holding appellant liable in the sum of \$9,900.00 and \$742.75 in costs. We respectfully submit that such evidence speaks for itself, and most emphatically cannot constitute a basis of special damage, either in favor of the men who testified, or for those who have never appeared and whom the court has never seen. In effect it places a premium upon such claims as these, for there is hardly a vessel entering port from northern waters, from which many of the passengers subject to seasickness could not make equally as good a showing, so far as any special damage is concerned.

We, therefore, respectfully submit that the court erred as assigned.

VI.

The seventh specification, Assignment of Error 22, goes to the question of the sufficiency of the claims.

In its monition, the court commanded all claimants to appear before the court and make due proof

of their claims before the commissioner (47-9). In the order of reference, the court directed that proof of the claims should be made before said commissioner as prescribed by rules and practice of the court (50-1). In attempted compliance therewith, an answer was filed, signed by William Martin, proctor for claimants, and verified by William Lundberg. In the opening of the answer appears the names of thirty-three persons (66), but in no other place in the record is any other appearance or claim for the parties to be found. It is true that the court entered an order permitting a joint answer (24), but such answer in no respect complies with the rules of the District Court, which prescribe the method of procedure in limitation of liability proceedings.

Rule 58 provides: "Proof of claims presented to the commissioner shall be made by or before the return day of the monition by *affidavit* specifying the nature, grounds and amounts thereof, the particular dates on which the same accrued, and what, if any, credits were given thereon, etc. * * * Any claim so objected to must be established by further *prima facie* proof on notice to the objecting party as in ordinary cases. * * *"

Rule 54 of the Supreme Court prescribes that "the court shall issue a monition against all persons claiming damages * * *, citing them to appear before the said court and make due proof of their respective claims at or before a certain time to be named in said writ. * * *"

Rule 56 provides: “* * * and any person or persons claiming damages as aforesaid, and who shall have presented his or their claim to the commissioner *under oath*, shall and may answer such libel or petition, and contest the right of the owner or owners of said ship or vessel, either to an exemption from liability, or to a limitation of liability under the said Act of Congress, or both.”

There was no compliance with these rules. No proof of claim in form of affidavit was made. The only pretense of the claim was the joint answer signed by proctor and verified by Lundberg. Rule 58 of the District Court contemplates and provides that each person having a claim shall present it in the form of an affidavit,—in other words, that he shall *personally make oath* to his claim, not through the medium of some other party, who may or may not be so authorized. And having made such showing, if it is objected to, then he must go further and establish it by *prima facie* proof. As to any of the twenty-six claimants, who did not appear, is there a word of proof showing them to have been damaged in such manner or amount as to have a claim against appellant? Other than the appearance of the names of thirty-three different parties at the beginning of the answer, there is not a word in the entire record showing that they suffered any damage, or even that proctor was authorized to represent them. As well might

he have written in the name of every one of the 353 passengers and claimed that a sufficient proof of claim, as to maintain that there is any appearance or authority in the record for the twenty-six who have not otherwise appeared. Appellant has yet to see any of them or see the authority by which proctor was authorized to appear for them in this proceeding.

The claim of Atkinson is, of course, established by his judgment in the Superior Court.

The rules of the Supreme Court contemplate that the claim shall be under the solemnity of an oath, for rule 56 provides that any who have prescribed a claim to the commissioner *under oath*, may contest the proceeding. The rules were made to prescribe a method of orderly procedure, which has been cast aside with utter disregard by proctor in this proceeding. Wherein, in this case, have any of the "twenty-six" subscribed to an oath alleging that they suffered any injuries or damages on the voyage in question? If the rules are to have any force or effect, the so-called claimants are without standing in court.

We respectfully submit that the District Court erred.

VII.

Under this division we shall discuss Specifications of Error 8 to 33, inclusive, for they all go to the question of the error of the District Court in rendering and entering judgment and decree against appellant and its stipulator in favor of the appellees who did not appear and testify in the proceeding. As far as what we shall say at this time it is equally applicable to all.

As has been pointed out in our previous discussion, the only appearance, if indeed it can be called an appearance, in this proceeding of any of the twenty-six appellees mentioned in the Specifications 8 to 33, was by the insertion of their names in the so-called joint answer (75). Mr. Martin signed the answer as their proctor, and it was verified by William Lundberg, who afterwards appeared and testified in his own behalf. In no other manner have such appellees come into this proceeding. They have failed to testify in their own behalf and except for the allegations in the joint answer, which admittedly is not proof, there is not a word in the record showing or tending to show that these men were without berths and proper accommodations, or that they suffered any ill effects from the voyage.

Appellant's witnesses testified that no berths remained untaken when the steamer reached Valdez, and that notice was given those boarding the vessel at that point of such condition and that a refund of their passage money could be secured if they did not desire to go under the conditions existing. All knowledge of such notice was denied by those who testified. If they had possessed such knowledge, certainly the court would listen to no complaint upon that ground, and yet how could the District Court, upon the testimony of the six, who did not even attempt to testify in behalf of others than themselves, say that such notice was not given the twenty-six who have not appeared, and that they did not take passage with full knowledge of the condition aboard? If they did so, there was no breach of their contract of carriage in that respect, and no liability would rest upon appellant therefor.

The same may be said of those who boarded the steamer at Seward. So far as the record discloses, they may have taken passage with full knowledge of the presence of the fishermen and Orientals, and of the large number aboard, and thereby precluded any complaint on their part. In the absence of proof that they had no such knowledge, is it to be presumed that appellant is in any event liable? Such is not the con-

temptation of the rules in this proceeding, for rule 58 of the District Court provides that upon objection to any claim, it must be established by further legal prima facie proof on notice to the objecting party as in ordinary cases. Proof of their claims, upon objection, was required, and yet none of the six witnesses pretended to testify on behalf of the twenty-six who did not appear. Except for Redmond (181), it does not appear that any of the six even knew them. And the testimony of Lundberg, who swore to the answer, does not even disclose that he knew any of the twenty-six, or of the treatment they received.

The evidence adduced on behalf of appellant shows that unusual privileges were given all the steerage passengers—the right to go everywhere and use the first-class accommodations, and that some of those who had no berths were given permission to, and did, sleep in the saloon and social hall on the cushions (284). In the absence of their testimony to the contrary, can this court say that the “twenty-six” did not enjoy those privileges, and that they were not as good, if not better, accommodations than a canvas bottom standee in the steerage? Such is the effect of the District Court’s decision. In the absence of any evidence tending to show that the

“twenty-six” who did not appear, suffered by reason of any act of appellant, or its employees, how can the judgment of the District Court be justified? In the absence of any proof of special damage, a mere breach of the contract of carriage, as will later appear, would only entitle them to a refund of their passage money, and yet what did the District Court do? Penalized appellant in twelve times the amount of fare paid.

We, therefore, respectfully submit that the District Court erred, as assigned, in entering judgment for \$300 and costs in favor of each of the appellees who have not testified in the proceeding. This does not refer to the claim of Mr. Atkinson, the amount of whose claim has been determined, unless reversed on appeal.

If the District Court was in any way justified in considering on behalf of the twenty-six who did not appear, the testimony of the six claimants who have testified, appellant still feels that the judgment was erroneous. In that respect what we shall say under Specifications 34, 35, 36, 37, 38 and 39 applies with equal force to the twenty-six who did not testify.

VIII.

Appellant has assigned as errors the entering of judgment and decree against appellant and its stipulator in the sum of \$300 and costs in favor of each of the appellees, Avery, Roark, Lundberg, Johnson, Redmond and Stank, all of whom testified in the proceedings before the commissioner. Specifications of Error 34, 35, 36, 37, 38 and 39 may be, therefore, very properly considered together.

The District Court in its memorandum decision (322) found that the charges made in their pleadings by appellees were disproved by a fair preponderance of the evidence, except in one particular, viz., the vessel did not have berths nor places for the number of steerage passengers received on board. In its finding of failure of proof in that respect, the Court dismissed all evidence of the "notice of no berths," which the officers of the steamer claimed to have given at Valdez, as an afterthought. Whether the Court was so justified in finding, we have previously considered, and it needs no reiteration here. The Court also found the ship overcrowded, and not maintained in a condition of cleanliness, all of which we have discussed. We have also pointed out to this Court the entire want of any showing of special dam-

age on the part of any of the appellees who appeared and testified, their cases of illness being largely attacks of seasickness, with its nauseating results. The Court found that the charges of unseaworthiness and insufficient provisions were disproved by a fair preponderance of the evidence (322). It did find, however, that the contract of carriage was broken, and that it did not consider the sum of \$300 exorbitant compensation for physical suffering caused by such breach. The fare paid by each of the appellees was \$25.00, so that the effect of the decision was to penalize appellant in twelve times the amount of fare paid. As has been pointed out, it is nothing more or less than a penalty for there is not a word of evidence in the whole record showing a special damage in that amount to have been suffered. Avery felt indisposed for a month; Roark "didn't feel so bad after all, when he came to think of it"; Stank was seasick until Juneau was reached; Johnson had the same ailment; Redmond couldn't describe any suffering; and Lundberg claimed his sickness was from eating, as he said: "Yes, sir, I got sick all right." Surely such testimony cannot be defended as a foundation for special damage, and in its absence, the amount of the judgment is without warrant of law.

In *De Colange vs. The Chateau Margaux*, 37 Fed. 157, where the contract of carriage was broken by deviation of the steamer, but no special damage was

shown, Judge Brown, of the Southern District of New York, awarded a refund of the passage money.

In *The Willamette Valley*, 71 Fed. 712, the severest penalty, in proportion to the amount of passage money paid, in all the American cases we have been able to find, was imposed. There the purser refused to honor a first class ticket purchased from a broker, and demanded of the passenger first class fare. This, the latter refused to pay, and offered to purchase a steerage ticket, which was refused by the purser,—with the result that the passenger was obliged to pass the night and part of the day without food or bed, in an exposed part of the steamer, in cold and foggy weather. The court awarded him \$300 damages, justifying it on the ground that the libellant was subjected to annoyance, and some public humiliation, with great discomfort, but had suffered no serious physical injury. But, as we say, the decision in its drastic force is not in accord with the weight of authority, in the absence of a showing of special damage.

In *Defrier vs. The Nicaragua*, 81 Fed. 745, the Court awarded \$50.00 to each of the libellants as damages for breach of their contract of carriage.

In *The D. C. Murray*, 89 Fed. 503, where passengers on a sailing vessel were so ill treated and poorly

fed that they left the vessel at Honolulu, on a voyage from San Francisco to Sydney, the Court awarded them \$100.00 each. A fare of \$125.00 had been paid.

In *The President*, 92 Fed. 673, 677, where there was a failure to remain at Unalaklik, Alaska, a sufficient length of time to allow passengers from St. Michael to land, Judge De Haven held that there was a breach of the contract of carriage and upon the question of damages, the recovery must be limited to the actual loss sustained by the libellants in consequence of the breach.

A question of breach of contract of carriage for failure to furnish proper and sufficient provisions was considered by the Circuit Court of Appeals for the Fifth Circuit in *The European*, 120 Fed. 776. In that case the master of *The European* carried a number of muleteers from Durban, South Africa, to New Orleans. Suit was brought for breach of contract, libellants alleging insufficient accommodations and improper food. The District Court awarded them \$15 each, but this was increased to \$45 by the Appellate Court. The award was based upon the Federal statute (Sec. 4 of the Passenger Act of 1882, 22 Stat. 188, U. S. Comp. St. 1901, p. 2935), which provides a penalty of \$3.00 per day for failure on

the part of the steamship to provide the passengers with provisions prescribed. The fare paid was \$55 for each passenger.

By this statute, the Federal government has regulated the accommodations and provisions to be furnished by passenger steamships engaged in foreign trade. The same statute, in Sec. 2, imposes a penalty of \$5.00 for each passenger carried for failure to provide the accommodations prescribed. While the statute does not apply to vessels engaged in the coastwise trade, it stands, by analogy, as an authority for the amount of penalty which should be imposed upon coasting vessels failing to provide sufficient accommodations to its steerage passengers, in the absence of any showing of special damage. It was in this respect that the District Court found the contract of carriage broken in the case at bar. In view of such statutory authority, has the award of twelve times the passage money any defense in law or justice?

A somewhat similar case to that at bar came before this Court on appeal from this District in the case of *Pacific Steam Whaling Co. vs. Grismore et al. (The Valencia)*, 117 Fed. 68. In that case complaint was made of an overcrowding of the steamship, the

failure to furnish second-class quarters and wholesome and properly cooked food. In addition, on arrival at Nome, the steamship landed the passengers on the beach, but withheld from them for a considerable period their baggage, tools and supplies, and from some of them goods and merchandise for the transportation of which charges had been paid. Special damages were proved by some of the passengers and for these a larger award was made, but for those who made no such showing judgment for \$75 and interest was entered. The case contained not only the elements of personal discomfort that are charged in the case at bar, but extra expenses, losses of baggage and freight, and consequential losses on account of delay in delivering the baggage and freight. In its effect upon the passengers, the misconduct of that steamship was more severe and resulted in a real personal damage not to be found in the case at bar. And yet the Court did not make its award twelve times the fare paid.

The best known of all cases similar in their character to the case at bar, was that of "*The Oregon*," before this Court, and reported in 133 Fed. 609. That case had all the elements of a breach of contract of carriage alleged in the case now before the Court, and many additional. Not only was a con-

dition of uncleanness found to exist aboard, but the ship was unseaworthy (though this was not considered a breach in that particular case), and broke down at sea, causing great mental suffering and anguish. She was insufficiently provisioned, and the food was not served in a palatable condition, with the result of a real suffering on the part of the passengers. So extreme was the case that this Court felt justified in saying, page 624:

“The testimony relating to the lack of wholesome food on the voyage is shocking in the extreme; and, making allowance for exaggeration, it still remains unequaled by anything in the reports of ocean navigation of late years.”

So injured did the passengers consider themselves that 350 out of 374 on board, joined in the action, and there was an abundance of testimony showing special damage and injury suffered. And in view of all these facts, the District Court entered and this Court affirmed, a judgment awarding the libellants damages in double the amount of fare paid.

Read that case and compare it in all its details with the record before this Court,—the entire absence here of any showing of special damage, the conflict in the testimony as to the cleanliness of the ship, the question as to whether the passengers came aboard

at Valdez knowing that there were no berths, the want of any evidence on behalf of 26 of the claimants, the unusual privileges given the steerage passengers, the rough weather and seasickness, and we fail to understand how the judgment of the District Court awarding damages in the sum of \$300—twelve times the amount of fare paid—to each of the claimants, can be justified. It is contrary to all authority.

We, therefore, respectfully submit that the Court erred as assigned.

IX.

Specification of error 40, assignment of error 57, goes to the question of taxing of costs. It is sufficient to say that if the District Court erred in entering judgment on behalf of claimants, or any of them, it erred in taxing costs on their behalf, as well. What has already been said as to the error of the judgment and decree is equally applicable to this assignment of error. This does not affect, however, the taxing of Atkinson's costs.

X.

Appellant has assigned as error 58, specification 41, the taxation of \$10.00 docket fee for each of the claimants. It is to be noted that but six of the 33 appeared and testified; 26 have made no appearance in the proceeding other than by the insertion of their names in the joint answer. Atkinson's claim, of course, is determined and the docket fee properly taxed in his favor. As respects the others, it is a matter of discretion with the Court, conditioned first upon an entry of judgment for damages. In any event, we cannot but feel that the Court went beyond a reasonable discretion and in that respect erred.

XI.

The District Court taxed as costs \$4.00 for each of the complaints filed in the Superior Court by 25 of the claimants. It is manifest that if the claimants are not entitled to a decree, the costs are improperly taxed.

We, therefore, respectfully submit that the Court has erred as assigned, and pray that the decree, except as to Atkinson, may be reversed, and that the decree of this Court should be that claims of the re-

maining claimants be dismissed with costs; or, in the event that this Court finds the contract of carriage broken, that the judgment of the District Court be modified and reduced to a nominal amount, with costs.

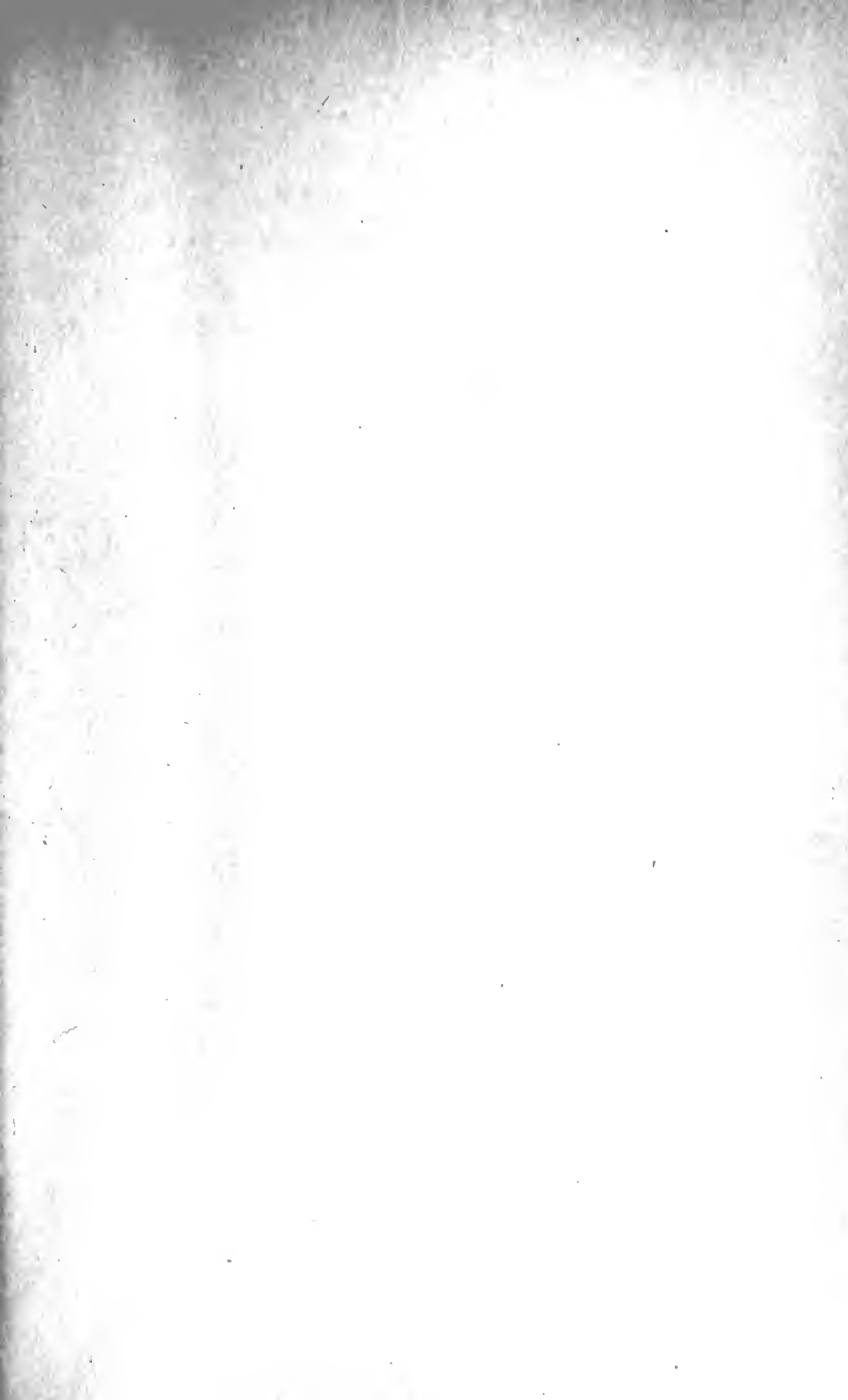
Respectfully submitted,

CHARLES P. SPOONER,

W. H. BOGLE,

IRA A. CAMPBELL,

Proctors for Appellant.





IN THE

United States Circuit Court of Appeals

FOR THE NINTH CIRCUIT

THE NORTHWESTERN STEAMSHIP COMPANY, LIMITED, Petitioner,

Appellant,

vs.

C. RANSOM, JOHN HANNAFIN, A. ARTAL, GUST ANDERSON, ERIK JOHNSON, SAM ATKINSON, WILLIAM LUNDBERG, J. L. PORTER, TOM BERG, JACOB OSTERHOLM, J. L. SAGE, JOHN BORLAND, J. R. MORELAND, LOUIS MARTIN, MATT MATTSON, WILLIAM R. PIERCE, H. A. BROADED, P. McCORMICK, CHAS. KELLY, FRANK HANNIGAN, ROASLIE PAPES, T. VANDENENK, F. C. AVERY, A. O. JOHNSON, JOHN SULLIVAN, J. ABOHDEN, EMIL LINDQUIST, FRANK SMITH, HADE ROARK, G. W. BELL, ROBAK POWELL, PAT REDMOND, and EMIL STANK,

Appellees.

No. 1732

In the Matter of the Petition of THE NORTHWESTERN STEAMSHIP COMPANY, LIMITED (a Corporation), Owner of the Steamer "SANTA CLARA," an American Vessel, for Limitation of Liability.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF WASHINGTON, NORTHERN DIVISION.

Brief of Appellees

WM. MARTIN,
Proctor for Appellees.

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Seattle, Washington.

FILED

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PORTER, TOM BERG, JACOB OSTERHOLM,
J. L. SAGE, JOHN BORLAND, J. R. MORE-
LAND, LOUIS MARTIN, MATT MATTSON,
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Brief of Appellees

STATEMENT OF THE CASE.

The appellant on the 6th day of March, 1908, filed its petition in the lower court asking to have its liability limited to the value of the steamer

“Santa Clara” and the freight pending at the termination of a certain voyage made by the vessel from Uyak,, Seward and Valdez, Alaska, to Seattle, Washington, leaving the Alaskan ports on or about the 6th day of October, 1906, and terminating at Seattle, Washington, on or about the 21st day of October, 1906. Immediately upon the termination of the voyage of this vessel on the 21st day of October, 1906, the appellees each filed a claim for damages against The Northwestern Steamship Company, Limited, in the sum of \$500.00. The Company refused to recognize the claims and the appellees commenced separate actions in the Superior Court of King County, State of Washington, to recover damages in the sum of \$500.00 from the Company on account of its breach of their contract of carriage on this vessel and voyage. With the crowded docket in the Superior Court, the sum of \$300.00. A motion for a new trial was interposed by the appellant, argued and denied, and judgment entered in favor of the appellee, Sam Atkinson, for the sum of \$300.00 and costs amounting to \$114.40 (pp. 380 and 384). No appeal was prosecuted the appellant was able through dilatory tactics to delay the trial in the Superior Court of each of these actions for almost eighteen months, but finally the

cases were set for trial. The case of Sam Atkinson against the appellant was tried with a jury before the Honorable Arthur E. Griffin, Judge of the Superior Court of King County, Washington, and resulted in a verdict in favor of the appellee, Sam Atkinson, in cuted from this judgment. The appellant thereupon filed its petition for a limitation of liability in the lower court, and asked for an injunction against the appellees and against the Superior Court of King County, State of Washington, from trying or taking any steps towards the trying of any of these actions in the Superior Court. On the 11th day of March, 1908, an injunction was issued by the lower court enjoining and restraining the appellees from prosecuting their several suits in the Superior Court or their taking any steps whatever in the prosecution of these suits, and enjoined the Superior Court of the State of Washington for the County of King from all further prosecution or procedure in these actions (p. 25), and requiring the appellees to prosecute their actions before the commissioner appointed by the district court. The appellees made a motion in the district court to set aside the injunction, which motion was denied. The practice of the district court is to require all par-

ties having claims exactly alike to join in one libel for the purpose of unnecessarily encumbering the record. In this case an order was made permitting the appellees to join in one pleading in the prosecution of their claims against the appellant (p. 25). A pleading was filed in the nature of a libel by all the appellees answering the petition and adopting that part of the petition which set out the cause of action as alleged by each of the appellees in their complaint in the superior court, and in addition thereto alleging the unseaworthiness of the vessel. The petition itself set out the claim in full made by each of the appellees in their several complaints in the superior court. The claim or libel of the appellees was under oath (p. 69) and it was sworn to by William Lundberg, one of the appellees and libellants, and made for and on behalf of each of the appellees, and states that the affiant was a passenger, knew the contents of the claims and answer to be correct and true, and that the other appellees were absent from King County. No objection whatever was made to the answer and claims on account of the same not being verified by each of the appellees. Most of the appellees at that time were in the District of Alaska, and it would have been an impossibility to have se-

cured the affidavit of each of them to the answer or libel. The petitioner's objection to the answer and claims, is a denial of the facts alleged in the pleading (p. 55). The case then proceeded to trial the same as any ordinary admiralty suit, testimony was taken before the commissioner, W. D. Totten, and submitted to the Honorable C. H. Hanford, Judge, after argument. The only claims filed of course were those of the appellees, which totaled \$16,500.00. The appraised value of the vessel and freight pending was fixed by the appraisers at \$75,774.15, so that the only question presented to the lower court was the amount to be allowed the appellees, if anything, on their several causes of action against the vessel. The claim of the appellant, Sam Atkinson, had been passed upon by a jury and by Judge Griffin, and was placed in a final judgment. Judge Hanford also found for the appellees and fixed the amount of allowance to be made to each of them, including the appellant, Sam Atkinson, at \$300.00. Judgment was thereupon entered in favor of each of the appellees in the sum of \$300.00, so that the only question presented by the appeal, if it can be considered, is one of fact in fixing the amount of the allowance to each of the appellees, which has all been passed upon by a

jury and by the Honorable Arthur E. Griffin, Judge of the Superior Court of King County, Washington, and by the Honorable C. H. Hanford, District Judge.

ARGUMENT.

I.

It is questionable whether an appeal lies from the decision of the lower court. The appellant filed its petition in the lower court asking to have its liability limited to the value of the vessel and the freight pending at the termination of the voyage on which the causes of action alleged by the appellees arose, alleging that the appellee made claims for damages against the appellant in the sum of \$500.00 each, and set out their alleged cause of action in the petition (the facts alleged in the appellants' petition on which the appellees sought to recover being a copy of those alleged in their complaints in the superior court), and asked the district court to fix the amount, if any, due the claimants, and that the same be paid by the stipulations for the appraised value of the vessel. Everything that the appellant asked the lower court in its petition to do, it did. It granted the appellant a decree limiting its liability and assessed and allow-

ed the claims of the appellees in the sum of \$300.00 each, and directed that the same be paid by the stipulators for the value of the vessel and freight pending at the termination of the voyage. The lower court's decree in all respects was exactly what the appellant petitioned for, except that the petitioner had hoped that by depriving the appellees of a right by trial by jury it would receive a more favorable decision in a trial before the court.

It is a familiar rule that a party litigant cannot receive and accept the benefits of a decree and at the same time appeal from the decree. In this case the main purpose of the statute limiting liability of vessel owners is to relieve them from any judgments or claims in excess of the value of the vessel and freight pending at the termination of any venture or voyage with the vessel. This the appellant has received and the court in fixing the amount of the liability at not over one-seventh of the value of the vessel and freight pending at the termination of the voyage should not be heard to complain of the decree.

II.

The main point, however, presented on this appeal is whether or not the facts proven by the claim-

ants, or rather contestants' testimony, constituted a breach of the contract of carriage, and if so, whether or not the amount of the damages awarded were proper compensation to be allowed. These all are questions of fact and have been passed upon by a jury, by a judge of the superior court of King County, Washington, and by the honorable District Judge. It must be conceded that if the testimony of the contestants is to be accepted as true, and the inconvenience and suffering which they testify to undergoing is correct, there was a serious breach of the contract of carriage on this voyage and that the compensation allowed and awarded by the lower court was very small.

The lower court found that the steerage quarters were overcrowded and

“that the steerage passengers suffered discomfort from the filthy and bad condition of the steerage quarters is well proved. In the steerage there was 90 Chinese and Japanese fishermen, and a number of other foreigners, returning from a fishery where they had been employed during the preceding summer, and a company of United States soldiers. They filled all the space available for the accommodation of steerage passengers. The soldiers were received on board, after the vessel reached Valdes, but they occupied space especially reserved for them, so that the steerage passengers, other than the fishermen and soldiers, were not provided for. The fishermen

were all filthy and offensive in their manners. The Europeans were especially so, being intoxicated and turbulent, and the voyage was rough, and there was a good deal of seasickness. In view of these well established facts, and of the captain's testimony, it is absurd to expect the court to believe the testimony of employees on the vessel, tending to prove that the steerage was kept in a condition fit for human habitation. In his testimony, the captain makes the remarkable admission that conditions in the steerage were so bad that he did not care to go there, and only looked into it a few times." (pp. 323, 324).

This finding is well supported by the evidence. The testimony shows that there were about fifty steerage passengers who were not provided with any accommodations whatever and were compelled to lie around in hallways during the entire trip of twelve days without any place whatever in which to sleep. All the berths were taken by fishermen, who had been working for the petitioner Company, consisting of Russians, dagos, Chinamen and Japs. The Europeans were drunk, dirty, offensive, turbulent and abusive to the passengers during the whole voyage. They would not permit the passengers to sit or go to the first tables, and compelled them to eat what little they left of the food which was so bad and unwholesome that it could only be eaten by a man in a starving condition. The captain himself says:—

“Q. (Mr Campbell.) Did you go down in the steerage?

A. Yes, sir.

Q. Did you see anybody sick?

A. They were all sick—I wasn’t down there very often in that trip, because the mate told me they were all sick and drunk down there and I didn’t care to go down very often. (p. 301).

* * *

Q. (Mr. Martin.) Well, I am referring to those fishermen; they were a kind of rough crowd, weren’t they?

A. Why, I don’t know—when a man gets a little full he is generally rough—it is an actual thing.

J. G. Dillon, chief steward of the vessel on this trip, on cross-examination testified as follows:

“Q. (Mr. Martin.) You testified once before in the case in the Superior Court, didn’t you?

A. Yes, sir.

Q. I ask you if you didn’t answer this question as follows: ‘Q. What was the condition of the steerage passengers with reference to seasickness? A. I was kept busy from about eight o’clock in the morn-

ing until three the next morning—in fact, I didn't get to bed until late—from the time I left I never had my clothes off. I couldn't say who the men were, but there was an awful crowd of passengers." Is that correct?

A. That was quite a crowd for us because we hadn't been carrying such a crowd as that—we had, I suppose, three hundred and fifty passengers, I suppose, altogether.

Q. Why did they tell the steerage passengers that they could sleep around in the smoking-room and other places?

A. There was the big fishermen there and he would have his baggage in one standee and he slept in the other and his boots in the other, and those fellows had been drinking—they had some money given them when they left the cannery, and when they got to Seward they went up to the saloon and all got full, and when they come down they started fighting and "Big Barney" he was the leader.

Q. Did they practically drive the other steerage passengers out?

A. They were the boss of the steerage.

Q. The fishermen?

A. The fishermen; so the other fellows came back and said, 'Here, steward, that big fellow always jumps in my place. I had a bunk there last night, but another fellow has got it now.' I said, 'Go in the dining-room, go in the social hall, go anywhere you want;' in fact, we generally set a lunch-table in the night time—the half of the time we couldn't set up the table when those fellows would get in there, because they wouldn't change their clothes.

Q. That was the fisherman?

A. Some of those fellows.

Q. So that the odor was pretty bad down there?

A. Some of them fellows' feet was pretty bad; one of those fellows had on a khaki suit and he done his business and never took off his pants and came back for a drink and I never smelled anything like it in my life." (pp. 291, 292, 293.)

This is the appellant's own testimony from the captain of its vessel and the chief steward.

F. C. Avery, one of the appellees and whose testimony is the most conservative of the appellees, testified in part as follows:

"Q. (Mr. Martin.) Just go ahead and tell, Mr. Avery, what accommodations, if any, were given to you on that trip and voyage.

A. Well, to start in, when I bought my ticket I asked the man about the accommodations and he said I would need my blankets and that was all; that I would have a bunk and plenty of food and we would only be five days coming down. I wanted to buy a first-class ticket but he said he was out, and it would be only five days, and he said he thought we could put up with it and that the fare would be good, and so I bought a second-class. I came aboard the ship and I could not get any bunk and they didn't seem to try to provide for any, and instead of being five days it was twelve days coming down, and I never had a chance to take my clothes off the whole trip coming down, and I slept on the floor.

Q. It was more than twelve days?

A. No, sir, twelve days from Valdes; it was one day longer from Seward. And the grub was so bad we could hardly eat it.

Q. Now, state what effort you made to get a berth on that vessel.

A. Well, I went to the purser and also went to the captain and he said he would have the carpenter fix up some berths, and the carpenter came down where we were sleeping and there was just a short partition running out from the wall of the vessel, and he nailed two boards straight up and down from the floor to the ceiling and that was as far as he ever went towards fixing berths. There was some big sheets of boiler iron sitting up there and he threw them over on the floor and we had to sleep on them; on the top of the hatch; they were laid on the hatch.

Q. Did you sleep on this boiler iron when you did sleep on the voyage?

A. Yes, sir; that was the only place I had; that is all I could get.

Q. Did you look around for a better place?

A. Yes, sir.

Q. Could you find it?

A. No, sir.

Q. This is your signature on exhibit "C" (showing document to witness)?

A. Yes, sir.

Q. Were you up at my office when the claim was signed up?

A. Yes.

Q. Did you see those other passengers sign up there too?

A. Yes, sir.

Q. All at once?

A. All at the same time.

Q. The same parties whose names are on that exhibit "C"?

A. Yes.

Q. Were those parties on the vessel and on that voyage?

A. Yes, sir, we all went up there together to your office.

Q. From that trip?

A. Yes, the next morning.

Q. Now, where did they sleep on that voyage?

Mr. Campbell—I object to that as irrelevant and immaterial as to where other passengers than this one slept.

A. Well, they slept on the floor and on the tables and under the tables and in the smoking-room; in fact you would find them all around the ship in little blind hallways and any place they could get.

Q. (Mr. Martin.) How many parties were sleeping on the floor and in the hallways?

(Same objection interposed.)

A. I should judge there was in the neighborhood of fifty.

Q. I will ask you if there were more people sleeping on the floor than those parties that signed up this claim with you?

(Same objection and also as irrelevant, immaterial and incompetent.)

A. Yes, sir.

Q. More besides that?

A. Yes.

Q. What, if any, effort was made there by those other passengers mentioned in this exhibit "C" to procure a berth, that you saw?

(Same objection and also as leading.)

A. It seems they were all in about the same box — they were running to the captain and the purser and the mate, but it didn't do any good. (pp. 79, 80, 81, 82.)

* * *

Q. (Mr. Martin.) What part of the ship was this in which you were required to sleep on this boiler iron?

A. It was underneath the deck, inside of the vessel; I don't know what part they call it; it was down below.

Q. Was it on the same deck that the other passengers were sleeping on?

A. No, sir—that is the second-class, it was the same deck.

Q. But in a part not prepared for sleeping quarters?

A. No, sir.

Q. Now, just state to the commissioner here now and the Court what inconvenience you suffered by reason of being compelled to sleep in this part of the vessel on this boiler iron and not being provided with any berth.

(Objected to as leading.)

A. Well, it was almost impossible to get much sleep because the boiler iron laid sort of in a hall where the sailors and everybody, and the Chinamen were going backwards and forwards in the forward

part of the vessel and they had to walk over it and every time they touched it it would flap together.

Q. Rattle?

A. Rattle, Yes.

Q. State how frequently they walked over it, if you can.

A. Well, it seems like every half hour or so all night somebody walked over it.

Q. State whether or not anyone was walking or roaming around in that department at night.

A. Yes, sir; there were Chinamen gambling all around there and they were up and down and out and in there all night, and the sailors were passing backwards and forwards. One or two nights one of the sailors came in there drunk and we found him lying right across our bed asleep, and we had to rout him out.

Q. State whether you suffered much from this inconvenience.

A. Yes, sir, I did; I was not able to navigate when I got down here; I was tired out—I didn't have no chance to take my clothes off on the whole trip, and getting no rest and no place to sit down only just lay down on this place there.

Q. Could you lie down there in the daytime?

A. No, sir; the place was used in the daytime for the Chinamen to get their meals in and set their tables up on. (pp. 83, 84)

* * *

Q. What kind of water did they furnish you to drink on that trip?

A. The water was very filthy; it was warm and salty and also dirty and filthy.

Q. What kind of food was furnished you?

A. The food was bad; there was very little of it; you could not eat it at all.

Q. Describe fully to the Court.

A. The meat generally it was some kind of a stew and it was spoiled meat before it was cooked evidently, from the smell of it and there would be some few vegetables mixed with it, and they had sour bread that we could not eat at all and tea and coffee—that was about the principal diet on the trip. (p. 85.)

* * *

Q. To what extent was the meat decayed?

A. Well, you could smell it all over that part of the vessel where they fed us.

Q. Was it palatable?

A. No, sir. (p. 85.)

* * *

Q. What was the condition of your health when you went aboard the vessel?

A. It was good; I had been working hard all the summer.

Q. What was it when you came ashore in Seattle?

A. Well, I was pretty crippled up with rheumatism and weak from the trip; it was a month before I felt strong enough to go to work again or do anything. (p. 87).

* * *

Q. What was the condition of the vessel as to cleanliness?

A. Well, it was filthy, to tell the truth of it. The quarters where they had us was very filthy, wet and damp, and the closet down there was slopping over and running over on the floor and everybody that went through there would drag it all over the vessel, and also at night time when they would walk over it when we were asleep they would drag it right on to us—walk right over the closet and drag it over us. (p. 88).

* * *

Q. Did the Chinamen pass around where you were?

A. Yes, they had to walk right over us and pass right around when they would go to this closet—we slept right between them and this closet. (p. 89).

* * *

Q. Now, what, if anything, did you notice unusual about the vessel in navigating?

A. Well, the second or third day out they had an accident of some kind, one of the boilers was out of commission and they weren't making any time, and all the information we could get was that they took all the steam they could get from the other boiler to keep the pumps agoing, she was leaking so bad. (p. 90.)

* * *

Q. What, if anything, did you notice of the vessel laying to?

(Objected to as leading.)

A. She was lying to some of the nights before they got to Juneau they laid to one night all night.

Q. What seemed to be the matter?

A. Well, I could not tell, unless they were afraid to go ahead, as if they didn't know where they were. I couldn't tell what it was; and one night when they were working on the boilers they were laid up I guess.

Q. Did you notice whether the pumps were running?

A. Yes.

Q. What, if anything, was said on that trip right at the time about it taking all the steam that the boiler could keep up to keep the pumps going?

(Objected to as hearsay and leading.)

A. It was the principal talk among the sailors and ship hands.

Q. Who did you hear saying that, if anyone?

A. The second engineer.

Q. What did you hear him say?

A. He said they were crippled; he didn't know how they were going to get out of it. He said it took about all the steam they could make to keep the pumps a-going and keep the vessel headed to the wind." (p. 91).

Q. (Mr. Martin.) You met the claimants in this action on board the vessel and in my office when they signed up this suit?

A. Yes, sir.

Q. Did you see any of these passengers drunk or disorderly on the boat?

A. No sir.

Q. I will ask you if it is not a fact that the fishermen monopolized the steerage and were drunk and disorderly on the trip?

Mr. Campbell—I object to that as being leading and immaterial.

A. Yes, sir.

Q. I will ask you if any effort was made by the officers of the vessel to restrain these fishermen and make them be decent and orderly?

A. Not that I seen or heard of.” (318)

Appellee Roark testifies:

“Q. (Mr. Martin.) I will ask you to examine passengers’ exhibit “C,” and state if that is your signature there, Mr. Roark? (Showing.)

A. That is it.

Q. Were you present when those other passengers and claimants here signed that?

A. Yes, sir; we were all together there.

Q. That morning?

A. The next morning, after we came off.

Q. It was signed up in my office, wasn’t it?

A. Yes, sir.

Q. These other parties there that came up with you that signed that exhibit, were on the boat with you?

A. They were right there.

Q. Now did you see them sleeping around on the floor?

(Objected to as leading and irrelevant, immaterial and incompetent.)

A. Yes, sir; they didn't have any better accommodations than I did, that is, that I noticed.

Q. About how many people did you see sleeping around on the floor and on the hatches and places like that without berths?

Mr. Campbell.—I object to that as irrelevant, immaterial and incompetent, and as having no bearing on the measure of damages.

A. About thirty or forty, the way it looked to me. I didn't count them, but I know there were quite a number of them.

Q. Now state whether or not you suffered any from cold and inconvenience from want of sleep or

from sleeping that way.

(Objected to as leading.)

A. We did, certainly.” (pp. 120, 121.)

“Q. Describe fully what you had to eat and what the condition of it was.

A. Well, they had mulligan, mostly, and they would have the meat cut up in chunks and put in there, and potatoes.

Q. How was that?

A. Well, that meat would kill the whole thing—it would smell so strong it would make the whole mulligan smell—you could smell the meat.

Q. Did you suffer any from hunger?

(Objected to as leading.)

A. Yes, sir, I did; I could have eat most any time, but I didn't eat.

Q. To what extent? Describe your sufferings fully.

A. Quite a lot. About as bad a way as a man can punish himself is not to have enough to eat. I know that because I have toughed it and roughed it all my life, but I never was up against any harder proposition than that; in the Spanish-American

army when they didn't have two meals a day half the time, you didn't have that—it was far ahead of this.” (123, 124.)

Appelle Johnson testifies:

“Q. Where did you sleep, Mr. Johnson?

A. I slept on the floor about amidships—that is, part of the time, during the first off.

Q. And then where did you sleep?

A. I slept on the table one or two nights, but it was a hard place to get because the flunkies occupied that table down the steerage—the flunkies did themselves—I guess there was a half a dozen work-ways and they occupied that.

Q. That was considered an advantageous point to sleep on?

A. You could not sleep more than a minute before you would get rolled off. I tried it but got rolled off several times and then I slept on the floor about amidships.

Q. Still you would be up out of the dirt and slime on the table?

(Objected to as leading.)

A. Yes.

Q. Just go ahead and tell the condition of it, how things looked when you got aboard.

A. Everything was packed and every bunk occupied, and I guess there was about a half a dozen of them vomiting around there, those fishermen; they were drunk.

Q. The fishermen were drunk?

A. Yes, they were drunk and I staid on top of the deck until late in the evening, and I went down there and the smell was something awful, but they closed th door and they left it open about six inches and they had a chain on it, because it was so rough, and we had to stay in there, and I laid down below and the next day I was sick, and I was sick until I got to Juneau, and then I felt a little better, and we laid there half the night and part of the next day at Juneau and then we started by the inside, and it got smooth and I got to feeling better and I tried to get something to eat and I had a hard time of it. (p. 149.)

Q. Now, before we come to that, describe the condition of the vessel down there where you were as to cleanliness.

A. Well, in the first place, the Japs had one part of it and the Chinese the others, and between the two of them there was a couple of dogs in there that made it pretty bad, and certainly it was sloppy and wet all over the steerage department.

Q. What effort did you see them make to clean it up?

A. Well, we reported it; we told the steward and another fellow that came around, I think it was

the chief or the second steward. I think it was, and he said he would do this and do that but there was never anything done, and then at last there was three or four of them went up to see the captain and I didn't hear much what they done, but I know there was nothing done there afterwards.

Q. They made complaint to the steward first?

A. Yes.

Q. And then to the Captain?

A. Yes.

Q. And when, if at any time did they clean it down there?

A. Well, they didn't clean it until we got, I think, within about a day of port here.

Q. Before the inspectors got around?

A. Yes; they opened it up and cleaned it out, I think it was a day, maybe it was the same day, we landed. I think it was the same day because we landed here in the evening.

Q. Did you see many other people in that department sleeping without berths?

(Objected to as irrelevant, immaterial and incompetent.)

A. Well, they were all around me; all the tables

were occupied and in between the aisles was occupied, and in the boiler-room I think there was six or seven sitting on that open part on the top of the boiler; it was kind of corrugated screen above the boiler and about six or seven set up there and slept all night, and then around the steps there was always two or three lying there.” (pp. 148, 151.)

“Q. What do you know, if anything, about a shortage of provisions?

(Objected to as leading.)

A. Well, they told us that when we first got aboard.

A. When we were out to sea and they didn't give us anything we asked the chef if he could not get us something, and he said they were short; I think it was the third turn that I got a chance to get to the table, for those fellows in the bunks they occupied the aisle and as soon as he touched the bell they all fell out, and it took three turns before they were done.

Q. So that the regular passengers were not able to eat until after the fishermen got through?

A. Not until after the fishermen got through the passengers were not able to eat, because the fishermen occupied the bunks and the passageway, and there was nobody else could get in there until they got through.

Q. Do you know whether or not they were employed by the company?

A. That is what they said they were, they were employed by the company.

Q. (Mr. Martin.) State whether or not they were given the preference on the boat.

A. Well, they had everything their way because they had the bunks, and the bunks was right along where they ate—I guess there was not two feet of room, counting the table and all, because you had to go sideways and they were all in those bunks, and they each put their feet out as soon as they put anything on the table, and as soon as he touched the bell, down they would be, and then the next would be the same way, from the other bunks; they would all come over, so that there was no chances for an outsider to get anything until the third or fourth turn, and then there was not anything left, and the chef says, “We are short,” and we had to cut down, and we had to take what was left.

Q. Was that, generally speaking, true of the rest of the passengers?

A. Yes; those that didn't have bunks, only the ones that had bunks were fishermen.

(Objected to, and motion to strike out as hearsay.)

A. (Continuing.) As far as I could see—there may be one or two that had bunks, but I didn't know of any.

Q. Now, look at the signature A. O. Johnson, on exhibit "C" (showing); is that your signature?

A. Yes, sir.

Q. You recognize those other names there?

A. Well, I was there when they all signed.

Q. And did you go aboard with those same fellows?

A. With the most of them; some of them got on at Seward; I know quite a few of them from Seward.

Q. Where did the rest of them get on?

A. Valdes.

Q. Did any of these passengers that got on at Valdes get berths?

(Objected as irrelevant and immaterial.)

A. No, sir; because I was the first one getting down there, and I saw most of them getting on with their bags after I was on and I investigated the whole thing when I got on and I could not find anything.

Q. Now, were you present when these gentlemen signed this?

A. Yes.

Q. Are those the same parties that were on the boat?

A. Yes.

Q. And what accommodations did they have, if any, different from what you had?

A. They didn't have any different from mine.

Q. Just the same as yours?

A. Just the same as mine. (pp. 153, 154, 155, 156.)

The evidence in support of the court's finding is not even conflicting. The appellant's own evidence supports these findings of the court as strong as the appellees'; but even though the evidence were conflicting, this court's ruling would necessarily be the same. In the case of *Perriam v. Pacific Coast Co., et al.*, 133 Fed. 140, where the testimony was taken before a commissioner and reported to the court, as in the case at bar, this court in an opinion written by Judge Gilbert says:

“The general rule is well established, and has been repeatedly affirmed by this and other courts, that the findings of fact of the trial court in an admiralty case made upon conflicting testimony will not be disturbed on appeal, unless they are found to be clearly against the weight of the evidence. The *Alijandro*,

56 Fed. 621, 6 C. C. A. 54; *Whitney v. Olsen*, 108 Fed. 292, 47 C. C. A. 331; *The Oscar B.*, 121 Fed. 978, 58 C. C. A. 316; *Memphis & Newport Packet Co. v. Hill*, 122 Fed. 246, 58 C. C. A. 610. It is equally well established that the amount of the award in a salvage case, resting, as it does, largely in the discretion of the trial court, will not be readjusted in an appellate court, where there has been no mistake of fact of application of an unwarranted rule of compensation in arriving at the award. *Simpson v. Dollar*, 109 Fed. 814, 48 C. C. A. 663, and cases there cited; *The Flottbek*, 118 Fed. 954, 55 C. C. A. 448, 458. While we are disposed to think that the award in this case may have been greater than the actual peril of the *Nelson*, as we understand the testimony, warranted, we would not feel justified in disturbing it.”

The appellees submit that under the well settled rules of this court where even the evidence is conflicting, the appellate court will not review the findings or decisions of the lower court on questions of fact rather than to determine that the evidence is conflicting, and in such event will accept the findings of the lower court as conclusive.

III.

The appellant also alleges that the amount awarded by the lower court to each of the appellees was excessive. This matter likewise is a determination of a question of fact by the lower court and will not be disturbed any more than any other finding of

fact on conflicting evidence, unless it be found to be clearly against the weight of evidence. The question of the amount to be awarded to each of the appellees was passed upon by jury in the superior court, who had an opportunity of seeing and hearing the witnesses for appellees and appellant in the Avery case and awarded the appellee, Avery, the sum of \$300.00. This amount was again approved by the Honorable Arthur E. Griffin, Judge of the Superior Court, on a motion for a new trial and a judgment entered for that amount. Practically the same evidence was again submitted to the Honorable District Judge C. H. Hanford, and he again awarded each of the appellees the sum of \$300.00 as damages. This award for the suffering, humiliation and inconvenience which each of these appellees underwent on this vessel, and the fear and dangers which they were subjected to, is less than should have been awarded. The appellees testify that there were at least forty other passengers lying around on the halls and floorways in the steerage without being provided with accommodations whatever, or any effort being made to relieve their condition. The waiters were all workaways, who would do nothing more than they were compelled to do, and had no regard for the care, comfort or convenience of the

passengers, and while the lower court was not able to find on the testimony that there was a breach of the contract on account of the bad and insufficient food furnished, or on the unseaworthiness of the vessel, yet this court can not escape the fact on reading this testimony that the food was wholly unfit for consumption and positively dangerous to eat. It was the intention of the officers to come the outside passage from Seward to Seattle, which was usually made in five days; that they took the inside passage, which consumed about thirteen days, during all of which time these passengers were pent up in the condition described by the captain and chief steward; and while it was impossible for the appellees to prove unseaworthiness of the vessel, it is admitted that the vessel was delayed on the voyage by reason of defective boilers; and it is also admitted that when the vessel reached Seattle it went on the dry dock and had two large sister keelsons placed in her and repaired for the next voyage to the one out of which this suit arose, and when the vessel was making the very next voyage she was found to be leaking so badly before they got out of the Straits of Juan de Fuca that the vessel was compelled to return to Seattle, which she did with great difficulty, and had

it not been for the assistance she received when she got into the harbor at Seattle would have foundered. Under these circumstances we submit that the award made by the lower court is conclusive and not even subject to review in this court.

IV.

It is also contended by the appellant that in as-much as all of the appellees did not testify and that the pleading or claim filed by the appellees under oath was made by one of the appellees, the court should not allow damages to any of the appellees except those who may have testified. It is the rule of the lower court to impose terms upon libellants or claimants when they pile up a lot of cumulative evidence, and the lower court will only permit of the taking of the testimony of a portion of the libellants where they are numerous, as they are in this case. This rule and method of procedure was adopted by the Honorable C. H. Hanford in the trial of the Oregon Case, and approved by this court in its decision reported in 133 Fed. 609.

The tickets of the appellees were put in evidence showing that they were passengers, the passenger list also showed the same fact, and the witnesses tes-

tifying testified that all of the appellees were without berths and subjected to the same suffering and inconvenience and conditions that they did; that they all left the boat together and went and employed counsel, and on the same day that the vessel arrived at Seattle signed up a claim and served it on the Company which was signed by each of the appellees for damages in the sum of \$500.00 each (pp. 386, 388). Not only that, but suits were started in the Superior Court and after a delay of almost eighteen months had reached a point at which the same were set down for final trial, when the petition for limitation of liability was filed in this section by the appellant, in which petition the appellant itself again set out the claim made by each of the appellees, under oath, in their complaints in the Superior Court. The libel or claim was made up in the same manner that pleadings are usually made up in a libel suit, and it was verified in the manner called for by the rules of practice in admiralty, and no objection was ever made to it in the lower court on that grounds, and the complaint for that reason and assignment of error is first made in this court. Judge Seaman, in the case of *In re Davidson S. S. Co.*, 133 Fed. 411, says:

“Upon the further issue of liability for damages arising out of the collision the petitioner brings the case within rule 56, which reserves its right to contest such liability. ‘No presumption arises from the happening of a collision against either vessel’ (*Henry’s Admr. Jur. and Proc.*, Sec. 82) without fault on the part of one shown or confessed, and it is unquestionable that the general rules and practice in admiralty intend that all issues be well defined by pleadings in some form, with simple and explicit allegations of fact. I am satisfied, therefore, that the claim under which proof of liability is to be presented (rule 55) must be treated as a pleading in the nature of libel, and must set out ‘the various allegations of facts upon which the claimant relies in support of his suit,’ in accord with rule 23. While this requirement is not expressed in rule 55, and neither of the rules states method of framing such issue, nor mentions an answer to the claim, the hearing cannot proceed as contemplated by rule 55, for the purpose of a contest, without an issue presented in some form. The claimant, though called into court by the motion to prove any claim it may have, must prove that the damage was caused by fault of petitioner’s steamer, or fail of recovery. The petitioner is relieved from confession of liability by the allegations to that end in a petition; but those allegations are incidental only, and do not enter into the consideration of the primary and independent issue tendered by the petition to limit liability. Nor can they serve to relieve the claimant of the need to state and prove a cause of action when the issue of liability is reached without violating well-settled general rules governing such issues; and these rules, under the limited liability act, do not impress me as intending such reversal of the established order of pleading and proving liability. The statutory provisions which are applicable are

quite general in terms. Section 4284, Rev. St. (U. S. Comp. St. 1901, p. 2943), provides that one and the other parties 'may take the appropriate proceedings in any court' for apportioning any liability. It goes without saying that the fact of liability must be ascertained primarily. What is the 'appropriate proceedings' to that end? In the chapter on '*Limitation of Liability*' incorporated in the third edition of Benedict's Admiralty Practice the statute and rules are discussed, and the practice generally is exemplified with satisfactory clearness; but the present inquiry is not discussed, and no light is furnished in that excellent treatise for its solution. With no precedents interpreting the rules as to the practice upon such issue, I am of opinion that they intend the appropriate judicial hearing of the controversy over liability, with the issues presented upon distinct allegations of fact for and against the claim; that claimant must state, as the fundamental requisite of apportionment and recovery for damages arising out of the collision, a *prima facie* case of liability on the part of the petitioner's vessel, such liability being expressly reserved for contest; and that the petitioner becomes respondent in respect of such issue, and may either answer the claimant's allegations by counter statement of facts, consistent with the petition, or have the averments of the petition thereupon adopted for the purpose of the issue."

We submit that the procedure adopted by the district court in this case should be commended, and that no good purpose could be served by having each libellant file a long and separate libel to encumber the record. And it saves a considerable expense in

the prosecution of an action. The appellant was not prejudiced in any manner, but was benefitted by the joinder of the appellees in one libel or claim, besides, as stated, no objection was made to this mode of procedure or to the verification of the libel in the lower court at all.

V.

The appellees ask that this court impose damages in the sum of ten per cent. on the amount of the judgment upon the appellant, for the reason that it must be apparent to this court that the only purpose of prosecuting this appeal was for the purpose of delay, annoyance and damage to appellees, and that under the rules of this court that terms be imposed therefore.

This court will find the findings of the lower court well supported by the evidence, and that really the only question presented is a question of fact, which the appellant well knew could not be considered by this court, and that in prosecuting this appeal it was simply prosecuted as this Company, The Northwestern Steamship Company, Limited, does for the purpose of injuring the parties litigant and annoying them as much as possible.

The records of this court show a number of appeals similarly prosecuted to this court by the appellant. Such delays are injurious to the appellees; they put the appellees to a large expense and wast of time unnecessarily, and have but one purpose,—to deter parties from going into court on a meritorious cause of action to obtain redress, and enables the appellant to carry on his business in the manner in which it did in this case without regard to others' rights and with a notification to them that it may violate its contracts with impunity and that the injured party can not obtain redress, if at all, within about three years' time. They insist on violating their agreements and contracts, and take advantage of the court's procedure for redressing wrong.

Appellees respectfully submit that the judgment of the lower court in all respects should be affirmed, and that damages should be awarded in the sum of ten per cent. and added to the amount of the judgment against the appellant for prosecuting this appeal without merit and merely for the purpose of delay, annoyance and injury to the appellees.

WM. MARTIN,
Proctor for Appellees.

IN THE
United States
Circuit Court of Appeals
FOR THE NINTH CIRCUIT

THE NORTHWESTERN STEAMSHIP COM-
PANY, LIMITED, Petitioner,

Appellant,

vs.

C. RANSOM, JOHN HANNAFIN, A. ARTAL,
GUST ANDERSON, ERIK JOHNSON, SAM
ATKINSON, WILLIAM LUNDBERG, J. L.
PORTER, TOM BERG, JACOB OSTERHOLM,
J. L. SAGE, JOHN BORLAND, J. R. MORE-
LAND, LOUIS MARTIN, MATT MATTSON,
WILLIAM R. PIERCE, H. A. BROADED, P.
McCORMICK, CHAS. KELLY, FRANK HAN-
NIGAN, ROASLIE PAPES, T. VANDENENK,
F. C. AVERY, A. O. JOHNSON, JOHN SULLI-
VAN, J. ABOHDEN, EMIL LINDQUIST,
FRANK SMITH, HADE ROARK, G. W. BELL,
ROBAK POWELL, PAT REDMOND and EMIL
STANK,

Appellees.

No. 1732

In the Matter of the Petition of THE NORTHWESTERN STEAM-
SHIP COMPANY, LIMITED (a Corporation), Owner of the Steamer
"SANTA CLARA," an American Vessel, for Limitation of Liability.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON,
NORHERN DIVISION

Petition for Rehearing

W. H. BOGLE,
CHARLES P. SPOONER,
IRA A. CAMPBELL,

323-4 Colman Bldg., *Proctors for Appellant.*
Seattle, Washington.

IN THE
United States
Circuit Court of Appeals
FOR THE NINTH CIRCUIT

THE NORTHWESTERN STEAMSHIP COM-
PANY, LIMITED, Petitioner,

Appellant,

vs.

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STANK,

Appellees.

No. 1732

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON,
NORHERN DIVISION

Petition for Rehearing

*To the Honorable Judges of the Circuit Court of Ap-
peals of the United States for the Ninth Judicial
Circuit:*

Having carefully examined the opinion of the
Honorable Court, we think that, with propriety, we
may ask the court to consider whether this case be
not one in which it will be proper to grant a re-hear-
ing to the appellee upon the ground that:

No award of damages should be made to any of the parties who have failed to file claims as prescribed by the Rules of the District Court of the Western District of Washington and the Rules of the Supreme Court of the United States, and who have not testified or offered any proof in support of any claims for damages they may have had.

It is true that the District Court entered an order on the 9th day of March, 1908, permitting the filing of a joint answer, and that such answer was served as required in such order on the 20th day of March, 1908. On the 23rd day of March the court entered an order directing the issuance of a monition, which monition commanded all persons claiming any loss, damage or injury arising out of, or occasioned by, the voyage in question, to appear before the Commissioner, appointed by the court, and *make due proof of their claims*. On the same day, to-wit: March 23rd, the Court entered an order of reference directing that proof of said claims and the contest thereof, if any, be made before the Commissioner as prescribed by the rules and practice of the court. It thus appears that subsequent to the order permitting the filing of a joint answer and service of the latter, the court entered further orders directing that proof of claims be made before the Commis-

sioner and that such proof, and contest of the claims, be made as prescribed by the District Court Rules.

The alleged claimants failed to comply with such orders, for Rule 85 provides: "Proof of claims presented to the Commissioner shall be made by or before the return day of the monition by *affidavit* specifying the nature, grounds and amounts thereof, the particular dates on which the same accrued, and what, if any, credits were given thereon, etc. Any claim so objected to must be established by further *prima facie* proof on notice to the objecting party as in ordinary cases."

First: No proof of claim to the Commissioner was made by any claimant *by affidavit*. Other than the joint answer no claim was made, and yet the order directing proof thereof by affidavit was entered by the court subsequent to the order permitting the joint answer and its service in the case. The order directing proof by affidavit must be given some significance, must have been intended to have had some effect, and yet the only effect it could have, called for a compliance not made or pretended to be made by any of the alleged claimants. It is in this respect that we cannot but feel that there was a total failure on the part of the alleged claimants, and that they had no sufficient standing in the proceeding.

Second: Assuming, without so admitting, that the joint answer was sufficient without compliance with the rule requiring "proof by affidavit," yet, if it were so, such claims were objected to by the appellee, and upon such objection the rule (85) required that such claims must be established by *further prima facie proof* on notice to the objecting party as in ordinary cases. The only further proof offered to establish such claims was the testimony of F. C. Avery, Hade Roark, Emil Stank, A. C. Johnston, Patrick Redmond and William Lundberg in support of their own respective claims. No proof or testimony was offered by any of the remaining twenty-six alleged claimants, and so far as the record shows, these twenty-six may have suffered no damage in any respect whatsoever. So far as the record shows, these twenty-six may have had first class accommodations and received treatment of the highest order; so far as the record shows they may in the meantime have passed this life. The rule prescribes that the claims shall be established by further proof on notice to the objecting party, and yet as against the "twenty-six," appellee had no notice of any proof of claim of damages suffered by them. Of the six claimants who testified, appellee had an opportunity

to examine them as to damages suffered by them, but no such opportunity was given it as against those who did not appear. That there was no pretense of any "further proof" to establish their alleged claims was so considered by the Commissioner before whom proof was ordered to be made. Rule 85 provides: "The Commissioner shall, on the return day of the monition, file in open court a list of all claims presented to him." Rule 55 of the Supreme Court provides that the Commissioner shall make report of the claims so proven. The Commissioner did make such report, and his certificates recites:

"I further certify and report that proofs were made before me as Commissioner in the above entitled court, for the *following claimants*, in support of their *respective claims*, viz: *F. C. Avery, Hade Roark, Emil Stank, A. C. Johnston, Patrick Redmond and William Lundberg.*" No reference is made to any proof of claim by any of the remaining "twenty-six," and in this respect the record bears out the report of the Commissioner. And yet the court went beyond the Commissioner and awarded damages to alleged claimants who had made no legal *prima facie* proof on notice to the petitioner, and without any opportunity to contest any such claims. Our contention goes not merely to the want of pre-

sentation of proper claims, but to a total failure of proof in support of any such alleged claims. Want of such proof is not waived, and the judgment in this case without such proof, we cannot but feel, is taking property without due process of law.

This case is distinguished from the Oregon, 133 Fed. 609, in that objection was therein made by claimant to the taking of further proof, and no sufficient error was assigned. In the case at bar error was so assigned as to each of the particular claimants and the insufficiency of the evidence to justify the decree in favor of each was pointed out.

And finally, we respectfully suggest that the court again consider the points taken in our brief filed in the case, that there were no proper claims presented, and that there was no proof in support of any of the claims of the alleged claimants other than the six who appeared and testified.

Wherefore, upon the foregoing grounds, this appellee and petitioner respectfully prays this Honorable Court to grant to it a re-hearing of said cause.

W. H. BOGLE,

CHARLES P. SPOONER,

IRA A. CAMPBELL,

Proctors for Appellee and Petitioner.

I, Ira A. Campbell, of counsel for the appellee herein, do hereby certify that in my judgment the foregoing petition for a re-hearing is well founded, and that the same is not interposed for delay.

Ira A. Campbell

No. 1745

UNITED STATES CIRCUIT COURT OF APPEALS

FOR THE NINTH CIRCUIT.

THE EXPLORATION MERCANTILE COMPANY
(a Corporation),

Plaintiff in Error,

vs.

PACIFIC HARDWARE AND STEEL COMPANY
(a Corporation), **GIANT POWDER COMPANY**
CONSOLIDATED (a Corporation), and **J. A.**
FOLGER AND COMPANY (a Corporation)
Petitioning Creditors,

Defendants in Error.

TRANSCRIPT OF RECORD.

Upon Writ of Error to the United States District Court
for the District of Nevada.

FILED
SEP 29 1909

UNITED STATES CIRCUIT COURT OF APPEALS

FOR THE NINTH CIRCUIT.

THE EXPLORATION MERCANTILE COMPANY
(a Corporation),

Plaintiff in Error,

vs.

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CONSOLIDATED (a Corporation), and J. A.
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Defendants in Error.

TRANSCRIPT OF RECORD.

Upon Writ of Error to the United States District Court,
for the District of Nevada.

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur. Title heads inserted by the Clerk are enclosed within brackets.]

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[Creditors' Amended Petition in Bankruptcy.]

*In the District Court of the United States, in and for
the District of Nevada.*

IN BANKRUPTCY—No. 103.

In the Matter of EXPLORATION MERCANTILE
COMPANY (a Corporation),
An Alleged Bankrupt.

To the Honorable E. S. FARRINGTON, Judge of
the District Court of the United States, for the
District of Nevada:

Leave of this Honorable Court having been first
had and obtained therefor, the amended petition of
THE GIANT POWDER COMPANY, CONSOLI-
DATED, a corporation, organized and existing under
and by virtue of the laws of the State of California,
and having its principal place of business in the City
and County of San Francisco, State of California;
and

PACIFIC HARDWARE AND STEEL COM-
PANY, a corporation, organized and existing under
and by virtue of the laws of the State of New Jersey,
and having its principal place of business in the City
and County of San Francisco, State of California;
and

J. A. FOLGER & COMPANY, a corporation,
organized and existing under and by virtue of the
laws of the State of California, and having its prin-
cipal place of business in the City and County of

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San Francisco, State of California; respectfully shows:

That at all the times hereinafter mentioned the respondent above named, Exploration Mercantile Company, a corporation, has been and now is a corporation duly organized and existing under and by virtue of the laws of the State of Nevada, with its principal place of business at Goldfield, County of Esmeralda, State of Nevada.

That said respondent, Exploration Mercantile Company, has for the greater portion of six months next preceding the time of filing the original petition of these petitioners herein, and ever since said time, had its principal place of business at Goldfield, County of Esmeralda, State of Nevada, and that at all of said times it has been and now is engaged principally in trading and mercantile pursuits.

That said Exploration Mercantile Company, a corporation, at the time of filing the said original petition, owed debts to the amount of One Thousand Dollars, and ever since said time has continued to owe, and now owes, debts to the amount of One Thousand Dollars.

That at the time of filing the said original petition your petitioners were, ever since have been, and now are, creditors of said Exploration Mercantile Company, a corporation, having provable claims amounting in the aggregate, in excess of securities held by them, to the sum of Five Hundred Dollars.

That the nature and amount of your petitioners' claims are as follows:

An open account for goods, wares and merchandise, sold and delivered by said The Giant Powder Company Consolidated, a corporation, to said Exploration Mercantile Company, a corporation, within two years last preceding the time of filing the said original petition, in the sum of Three Hundred and Sixty and $45/100$ Dollars; and a promissory note in the sum of Fifteen Thousand Eight Hundred and Eighty-eight and $72/100$ Dollars, given by said Exploration Mercantile Company, a corporation, to said The Giant Powder Company Consolidated, a corporation, dated March 12, 1908, payable one day after date, with interest at eight per centum per annum, which said note was given in consideration of goods, wares and merchandise sold and delivered prior to said 12th day of March, 1908.

An open account for goods, wares and merchandise sold and delivered by said Pacific Hardware and Steel Company, a corporation, to said Exploration Mercantile Company, a corporation, within two years last preceding the time of filing the said original petition, in the sum of Three Hundred Seventy-six and $43/100$ Dollars; and a promissory note in the sum of Fifteen Thousand Thirty-five and $56/100$ Dollars, given by said Exploration Mercantile Company, a corporation, to said Pacific Hardware and Steel Company, a corporation, dated March 2, 1908, payable one day after date, with interest at eight per centum per annum, which said note was given in consideration of goods, wares and merchandise sold and delivered prior to said 2d of March, 1908.

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An open account for goods, wares and merchandise, sold and delivered by said J. A. Folger and Company, a corporation, to said Exploration Mercantile Company, a corporation, within two years last preceding the time of filing the said original petition in the sum of Three Hundred and Sixty and $63/100$ Dollars, and a promissory note in the sum of Two Thousand Thirty-three and $16/100$ Dollars, given by said Exploration Mercantile Company, a corporation, to said J. A. Folger and Company, a corporation, dated March 16, 1908, payable one day after date, with interest at eight per centum per annum, which said note was given in consideration of goods, wares and merchandise, sold and delivered prior to said 16th day of March, 1908.

And your petitioners further represent, that at the date of filing the said original petition herein, to wit, September 12, 1908, for more than four months continuously next prior thereto and ever since said time, the said Exploration Mercantile Company, a corporation, has been and now is, insolvent; that at the date of filing the said original petition herein, to wit, September 12, 1908, for more than four months continuously next prior thereto and ever since said time, the aggregate of said Exploration Mercantile Company's property, at a fair valuation, amounted to less than the sum of Sixty Thousand Dollars, and that at all the said times its debts were in excess of Seventy-four Thousand Dollars; and that within four months next preceding the date of the filing of said petitioning creditors' original petition the said Exploration Mercantile Company, a corpora-

tion, committed an act of bankruptcy, in that it did heretofore, to wit, on or about the 6th day of August, A. D. 1908, being insolvent, apply for a receiver for its property, that is to say:

That on or about the 14th day of February, A. D. 1906, the said Exploration Mercantile Company, a corporation, was organized by W. C. Stone, C. E. Wylie and Frank G. Hobbs; that the amount of the capital stock of the said corporation was then and there, and ever since has been, \$50,000.00, divided into 50,000 shares of the par value of \$1.00 each; that the original subscribers to said capital stock and the amounts subscribed by each are as follows, to wit: W. C. Stone, 48,000 shares, C. E. Wylie, 1,000 shares, and Frank G. Hobbs, 1,000 shares; that said W. C. Stone, C. E. Wylie and Frank G. Hobbs ever since the organization of said corporation have been and still are the owners of the said shares of the capital stock of said corporation and of all the capital stock thereof; that although the Articles of Incorporation of said Exploration Mercantile Company, a corporation, provide that the number of directors of said corporation shall be five, there have never been more than three directors thereof and that at all the said times since the organization of said corporation, said W. C. Stone, C. E. Wylie and Frank G. Hobbs, have been and now are the directors thereof; and that at all times herein mentioned said W. C. Stone has been and now is the President, said C. E. Wylie has been and now is the Vice-president, and said Frank G. Hobbs has been and now is the Secretary and Treasurer of said corporation.

That on and prior to the 6th day of August, A. D. 1908, certain of the creditors of said Exploration Mercantile Company, a corporation, which was then and there insolvent as aforesaid, were demanding payment of their just claims against said corporation, but there was then and there no actual or threatened attachment or litigation involving, or against, said corporation otherwise than to enforce said claims; that said W. C. Stone, C. E. Wylie and Frank G. Hobbs, said directors and officers of said corporation, then and there conspired and agreed together and they have ever since conspired and agreed together to take such measures and do such acts as would hinder, delay and defraud the creditors of said corporation; would compel said creditors to accept less than the full payment of their just claims, and thereby wrongfully obtain for said directors and officers a large part of the property of the said Exploration Mercantile Company, a corporation, which was then and there insolvent as aforesaid; and would evade the provisions of the laws of the United States in reference to bankruptcy, and prevent said creditors from obtaining a knowledge of the true condition of said corporation's affairs and from having, or participating in, the choice of a person or persons to act as trustee of said corporation or its property.

That in pursuance of said conspiracy and agreement said directors and officers, acting for and on behalf, and as the act and deed, of said corporation, which was then and there insolvent as aforesaid, on the 6th day of August, A. D. 1908, caused to be filed in the District Court of the First Judicial District

of the State of Nevada in and for the County of Esmeralda, an application praying for the appointment of a receiver with a view to the dissolution of said corporation, which said application was and is in the words and figures following, to wit:

“In the District Court of the First Judicial District of the State of Nevada, in and for the County of Esmeralda.

W. C. STONE,

Plaintiff,

vs.

EXPLORATION MERCANTILE COMPANY,
Defendant.

The plaintiff complaining of the defendant alleges:

I. That the defendant is a corporation organized and existing under and by virtue of the laws of the State of Nevada, with its principal place of business at Goldfield, in the County of Esmeralda, State of Nevada; that the defendant, as such corporation, has a capital stock of Fifty Thousand Dollars (\$50,000), divided into fifty thousand (50,000) shares of the par value of One (\$1.00) Dollar per share; that the officers of said corporation are the plaintiff, President; C. E. Wylie, Vice-president, and Frank G. Hobbs, Secretary and Treasurer; the directors of said company are: W. C. Stone, residence, Goldfield, Nevada; Frank G. Hobbs, residence, Goldfield, Nevada, and C. E. Wylie, residence, Goldfield, Nevada; that the capital stock of said corporation has been fully paid up and that there is no stock in the treasury of said corporation. That said corpora-

tion has liabilities in the sum of about Sixty-five Thousand Dollars (\$65,000), and has assets, exceeding the sum of Ninety-five Thousand Dollars (\$95,000); that among the creditors of said corporation defendant, and about the amounts owed them, are: Pacific Hardware & Steel Co., San Francisco, California, in the sum of Fifteen Thousand Dollars; Giant Powder Company, Con., San Francisco, California, in the sum of Fifteen Thousand Dollars; J. R. Garrett, Marysville, California, in the sum of Ten Thousand (\$10,000) Dollars; J. A. Folger & Company, San Francisco, California, in the sum of Two Thousand Eight Hundred Dollars (\$2,800); Standard Oil Company, Sacramento, California, in the sum of Two Thousand Three Hundred Dollars (\$2,300); and John S. Cook & Company of Goldfield, Nevada, in the sum of Sixteen Thousand Dollars (\$16,000).

II. That, owing to the depressed condition in business, and the inability of said defendant corporation at the present time to collect the amounts owing to it, the said corporation is in danger of its assets being wasted through attachment or litigation, as the aforesaid claims and other claims are due, and the said corporation is liable at any time to be attached and therefore be unable to carry on and continue its business or to be put to very large and useless expense by way of litigation, and the assets of the property be wasted thereby;

That plaintiff is the holder of more than one-tenth (1/10) of the capital stock of the said corporation defendant, in his own name and person, fully paid

up, and plaintiff avers that by reason of the facts aforesaid, the said corporation should be dissolved, and that a receiver should be appointed to take charge of the business and affairs of said corporation, that its property may be preserved, its creditors paid, and its assets cared for;

Wherefore, plaintiff prays for the order of this Court, appointing a receiver herein, to take charge of the affairs of said corporation, and conduct and manage the same, with a view to its dissolution, under the orders and directions of this Court, and that upon the filing of this complaint, the Court appoint a receiver and fix the amount of bonds to be given by him upon his taking the oath of said appointment; that the Exploration Mercantile Company and the directors of said corporation and each of them be enjoined and restrained from exercising any of its powers or doing any business except through, by and under said receiver; and for such other and further relief as to the Court may seem meet and proper in the premises.

THOMPSON, MOREHOUSE & THOMPSON,
Attorneys for Plaintiff.

State of Nevada,
County of Esmeralda,—ss.

W. C. Stone, being first duly sworn, deposes and says: That he is the plaintiff in the above-entitled action; that he has heard read the foregoing complaint, and knows the contents thereof, and the same is true of his own knowledge, except as to the matters therein stated on his information or belief, and as to those matters, he believes it to be true.

WALTER C. STONE.

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Subscribed and sworn to before me this 6th day of August, 1908.

[Seal]

I. S. THOMPSON,
Notary Public.”

That on said day a summons was issued out of said Court and said C. E. Wylie in pursuance of said conspiracy and agreement then and there acting for and on behalf, and as the act and deed, of said corporation, which was then and there insolvent as aforesaid, endorsed thereon an admission of service thereof in the words and figures following, to wit:

“August 6th, 1908. I, the undersigned do hereby admit that a copy of the complaint and a copy of the summons in the above action were delivered to me this day and I as manager and director of the said Exploration Mercantile Company do hereby admit and accept service of this summons for said corporation.

C. E. WYLIE.”

And on said day said directors and officers acting for and on behalf, and as the act and deed, of said corporation, which was then and there insolvent as aforesaid, caused said summons so endorsed to be returned to said Court and filed with the Clerk thereof. That in further pursuance of said conspiracy and agreement and on said 6th day of August, A. D. 1908, said directors and officers, acting for and on behalf and as the act and deed, of said corporation, which was then and there insolvent as aforesaid, caused to be filed with the said Court and the Clerk thereof an appearance and application for the appointment of a receiver of the property of said Exploration

Mercantile Company, a corporation, which said appearance and application was and is in the words and figures following, to wit:

“In the District Court of the First Judicial District of the State of Nevada, in and for the County of Esmeralda.

W. C. STONE,

Plaintiff,

vs.

EXPLORATION MERCANTILE COMPANY (a Corporation),

Defendant.

“Now comes C. E. Wylie, Manager and one of the Directors of the above-named defendant, and enters the appearance of the said defendant in the above-entitled cause, and asks the above-entitled Court to appoint as receiver of said defendant, C. E. Wylie, the undersigned, one of the directors of said corporation.

C. E. WYLIE,

Manager and Director of the Exploration Mercantile Company.”

That there has never been any process issued or appearance made in said cause in said State Court except as above set forth.

That thereupon, on said 6th day of August, A. D. 1908, said directors and officers of said Exploration Mercantile Company, a corporation, acting for and on behalf, and as the act and deed, of said corporation, which was then and there insolvent as aforesaid, moved the said State Court upon the said pleadings as above set forth, for an order, and said State

Court, on said day made its order, appointing said C. E. Wylie receiver of the property of said Exploration Mercantile Company, a corporation, with full power to take charge of the assets, control and business of said company; that said C. E. Wylie thereupon filed his bond as such receiver, took the oath of office, and on the 7th day of August, 1908, took possession of the business, property, and effects of said corporation as such receiver, and thence hitherto has continued to act and is now acting as such receiver and at all said times has been and now is in possession of said property as such receiver.

That on or about the 8th day of September, A. D. 1908, and at other times, in further pursuance of said conspiracy and agreement the said W. C. Stone, acting for and on behalf, and as the act and deed, of said corporation, which was then and there insolvent as aforesaid, sought to bring about a settlement of the claims of said creditors of said Exploration Mercantile Company, a corporation, whereby said creditors would obtain not to exceed sixty per centum of their said claims; and said W. C. Stone then and there said to these petitioners that by making such settlement said creditors would obtain a greater sum of money for their said claims than they would if they litigated their claims or if the affairs of said corporation were administered in bankruptcy by the United States Court, and that by making such settlement said directors and officers would make something for themselves.

That said directors and officers in pursuance of said conspiracy and agreement have, ever since the

said 6th day of August, A. D. 1908, refused and still refuse these petitioners access to the books of account, the stock-book, the book of by-laws, minute-book, and all other books of said Exploration Mercantile Company, a corporation, and at all said times refused and now refuse to permit the agent and representative of these petitioners to take or assist in taking, an inventory of the property of said corporation, although such access and opportunity was requested.

That ever since said 6th day of August, A. D. 1908, said Exploration Mercantile Company, a corporation, and each and all of said directors and officers have acquiesced in, upheld, ratified and confirmed the said proceedings and application for, and appointment of, said receiver as aforesaid; and said Frank G. Hobbs has ratified and confirmed the same and has since been continuously in the employ of said receiver.

That all of said directors and officers have, with reference to all the above-mentioned matters and things, been advised and represented by one and the same firm of attorneys, namely, Thompson, Morehouse and Thompson.

Wherefore, your petitioners pray that service of this petition, with a subpoena, may be made upon Exploration Mercantile Company, a corporation, as provided in the acts of Congress relating to bank-

ruptcy, and that it may be adjudged bankrupt within the purview of said acts.

THE GIANT POWDER COMPANY, CONSOLIDATED

By C. C. QUINN,

Secretary of said Corporation.

PACIFIC HARDWARE AND STEEL COMPANY

By W. H. SCOTT,

Assistant Secretary of said Corporation.

J. A. FOLGER & CO.

By R. R. VAIL,

Secretary of said Corporation.

E. E. ROBERTS,

J. L. KENNEDY,

ROBERT RICHARDS,

Attorneys for Petitioners.

United States of America,
Northern District of California,
City and County of San Francisco,—ss.

C. C. Quinn, W. H. Scott and R. R. Vail, do hereby make solemn oath that said C. C. Quinn is Secretary of the Giant Powder Company Consolidated, a corporation, one of the petitioners herein; that said W. H. Scott is Assistant Secretary of the Pacific Hardware and Steel Company, a corporation, one of the petitioners herein; that said R. R. Vail is Secretary of J. A. Folger and Company, a corporation, one of the petitioners herein; and that the

statements contained in the foregoing petition subscribed by them are true.

C. C. QUINN,
W. H. SCOTT,
R. R. VAIL.

Before me, J. D. Brown, a Notary Public in and for the City and County of San Francisco, State of California, this 22nd day of October, A. D. 1908.

[Seal] J. D. BROWN,
Notary Public in and for the City and County of
San Francisco, State of California.

[Endorsed]: No. 103. In the District Court of the United States for the District of Nevada. In the Matter of Exploration Mercantile Company, a Corporation, an Alleged Bankrupt. In Bankruptcy. Creditors' Amended Petition. Filed October 24th, 1908 at 11 o'clock and 30 minutes A. M. T. J. Edwards, Clerk. E. E. Roberts, J. L. Kennedy and Robert Richards, Attorneys for Petitioners, Carson, Nevada.

[Answer and Demand for Inquiry by a Jury.]

*In the District Court of the United States, in and for
the District of Nevada.*

In the Matter of the EXPLORATION MERCANTILE COMPANY (a Corporation),
An Alleged Bankrupt.

Now comes the Exploration Mercantile Company, the corporation against whom a petition for an adjudication in bankruptcy has been filed herein, and

does hereby controvert the Amended Petition, and files the following Answer:

I. That said Exploration Mercantile Company did not commit an act of bankruptcy as alleged in the amended petition, but on the contrary charges the fact to be that all proceedings taken in said District Court of the State of Nevada was taken against it and was not the act of said Exploration Mercantile Company.

II. That at the time of the filing in said State District Court of the proceeding set out in said amended petition, said Exploration Mercantile Company was not insolvent, but, on the contrary avers, that its property at a fair valuation, was more than sufficient to pay its debts.

III. That said Exploration Mercantile Company never at any time applied for a receiver, and denies that there was no threatened litigation or threatened attachments against it, but on the contrary avers, that a suit was brought and an attachment issued against it on the said 6th day of August, 1908, and released only by virtue of the said proceedings in said State District Court.

IV. That it is not true that W. C. Stone, C. E. Wylie and Frank G. Hobbs conspired or agreed to such measures or acts to hinder, delay and defraud the creditors of said Exploration Mercantile Company, or to compel said or such creditors to accept less than the full payment of their just claims or to wrongfully or otherwise obtain for said directors or officers a large part of the property of said Ex-

ploration Mercantile Company, a corporation; or that they or either of them intended to or would evade the laws of the United States; in reference to bankruptcy, or prevent said creditors from obtaining knowledge of the true condition of the affairs of said corporation or participating therein, or to prevent said creditors of a choice of a person or persons as trustee or trustees of said corporation, or its property; or that in pursuance of any conspiracy or agreement, said directors or officers acting for or in behalf of or as the act or deed of said corporation or that said corporation was then or there insolvent, on the 6th day of August, 1908, or at any other time caused to be filed in said State District Court, the application set forth in said amended petition or that any of the acts set out in said amended petition was the act or deed of said corporation, while insolvent or with a view of insolvency or was through any conspiracy or agreement to injure, delay or defraud any creditor or creditors of said corporation.

V. That said W. C. Stone did on or about the 8th day of September, 1908, make by way of compromise, and not otherwise, a proposition to said petitioners to adjust their claims upon a basis approximately at sixty per centum but such proposition of compromise was not made in pursuance of or in furtherance of any conspiracy, but solely for the reason that by the wrongful and unjust acts of these petitioners in filing the original petition herein, and causing an injunction to issue out of this Court, they closed up the business of said corporation, then

a going concern, to its great damage and to the damage and injury of the creditors thereof, and stopped and prevented the said corporation from carrying on and conducting its business, and drove its customers to other people and destroyed its good will, which was then and there of great value, and by reason thereof the said W. C. Stone made the said proposition of compromise and not otherwise.

VI. It is true that said officers, but not in conspiracy or agreement, have refused to let one J. L. Kennedy have access to its books, upon personal demand made by him, and for the reason that the said corporation was in the hands of a receiver in the said proceedings, in said State Court, and therefore its books and papers were in the custody of the law and not in the custody and control of the officers and directors of said corporation and it avers: That said creditors or either of them could at any time apply to said State Court and obtain any inspection of the books of said corporation they or any of them desired.

VII. It is not true that said Exploration Mercantile Company or any of its officers have acquiesced in said proceedings, in said State Court, further than they were bound so to do by reason of the nature and character of said proceedings, and as they were bound to do, under the State law applying to said proceeding.

VIII. That the proceeding in said State Court was commenced prior to the filing of the petition herein and that said State Court had jurisdiction in the premises both of the subject matter and person

of said Exploration Mercantile Company, and its receiver was duly and regularly appointed and duly and regularly qualified and was in the sole and exclusive possession of all the property of this corporation when the petition was filed herein, and that said Court was and is a separate court, over which this Hon. Court has no supervisory control or jurisdiction and that the proceedings in said State Court was not an act of bankruptcy, and therefore, this Hon. Court has no jurisdiction in the premises and therefore it avers it should not be declared bankrupt, for any cause in said amended petition alleged, and this it prays and demands and that the matter may be inquired into by a jury.

EXPLORATION MERCANTILE COMPANY,
By FRANK G. HOBBS,
Secretary.

State of Nevada,
County of Esmeralda,—ss.

Frank G. Hobbs, being duly sworn, says: That he is the Secretary of the Exploration Mercantile Company, alleged bankrupt herein, and does hereby make solemn oath that the statements of fact contained in the foregoing answer are true, according to the best of his knowledge, information and belief.

FRANK G. HOBBS.

Subscribed and sworn to before me this 28th day of October, A. D. 1908.

[Seal]

H. M. FARNAM,

Notary Public in and for the County of Esmeralda,
State of Nevada.

THOMPSON, MOREHOUSE & THOMPSON,
Attorneys for Alleged Bankrupt, Exploration Mer-
cantile Company.

[Endorsed]: No. 103. In the District Court of the United States, in and for the District of Nevada. In the Matter of the Exploration Mercantile Company (a Corporation), an Alleged Bankrupt. Answer and Demand for Jury. Filed Octr. 30, 1908 at 9 o'clock A. M. T. J. Edwards, Clerk. Thompson, Morehouse & Thompson, Attorneys for Alleged Bankrupt. Goldfield, Nevada.

[Plea to the Jurisdiction.]

*In the District Court of the United States, in and for
the District of Nevada.*

No. 103.

In the Matter of the EXPLORATION MERCAN-
TILE COMPANY (a Corporation);
An Alleged Bankrupt.

Walter C. Stone, plaintiff in the action pending in the District Court of the First Judicial District of the State of Nevada, in and for the County of Esmeralda, entitled "Walter C. Stone, Plaintiff, vs. Exploration Mercantile Company (a corporation), Defendant," specially appearing under protest

herein, and for the purposes of this plea and for no other, says that it is not true that said alleged bankrupt on the 6th day of August, 1908, being insolvent, applied for a receiver for its property, or that said Mercantile Exploration Company is insolvent, or that it filed any petition of any kind for a receiver, or that such proceeding in said State Court was or is an act of bankruptcy, but that said proceeding in said State Court was filed by Walter C. Stone, as a stockholder in said corporation, the said Exploration Mercantile Company, under and by virtue of the provisions of an Act of the Legislature of the State of Nevada, entitled "An Act providing a general corporation law," approved March 16th, 1903, and which said proceeding in said State Court was duly commenced by the filing by said Walter C. Stone of a complaint in said State Court, in the words and figures following, to wit:

"In the District Court of the First Judicial District of the State of Nevada, in and for the County of Esmeralda.

W. C. STONE,

Plaintiff,

vs.

EXPLORATION MERCANTILE COMPANY,
Defendant.

The plaintiff complaining of the defendant alleges:

I.

That the defendant is a corporation organized and existing under and by virtue of the laws of the State

of Nevada, with its principal place of business at Goldfield, in the County of Esmeralda, State of Nevada; that the defendant, as such corporation, has a capital stock of fifty thousand dollars (\$50,000), divided into fifty thousand (50,000) shares of the par value of one (\$1.00) Dollar per share; that the officers of said corporation are the plaintiff, President; C. E. Wylie, Vice-president; and Frank G. Hobbs, Secretary and Treasurer; the directors of said company are: W. C. Stone, residence, Goldfield, Nevada; Frank G. Hobbs, residence, Goldfield, Nevada, and C. E. Wylie, residence, Goldfield, Nevada; that the capital stock of said corporation has been fully paid up and that there is no stock in the treasury of said corporation. That said corporation has liabilities in the sum of about Sixty-five Thousand Dollars (\$65,000), and has assets, exceeding the sum of Ninety-five Thousand (\$95,000) Dollars; that among the creditors of said corporation defendant, and about the amounts owed them, are: Pacific Hardware & Steel Co., San Francisco, California, in the sum of Fifteen Thousand Dollars; Giant Powder Company, Con., San Francisco, California, in the sum of Fifteen Thousand Dollars; J. R. Garrett, Marysville, California, in the sum of Ten Thousand (\$10,000) Dollars; J. A. Folger & Company, San Francisco, California, in the sum of Two Thousand Eight Hundred Dollars (\$2,800); Standard Oil Company, Sacramento, California, in the sum of Two Thousand Three Hundred Dollars (\$2,300); and John S. Cook & Company, of Goldfield, Nevada, in the sum of Sixteen Thousand Dollars (\$16,000).

II.

That, owing to the depressed condition in business, and the inability of said defendant corporation at the present time to collect the amounts owing to it, the said corporation is in danger of its assets being wasted through attachment or litigation, as the aforesaid claims and other claims are due, and the said corporation is liable at any time to be attached and therefore be unable to carry on and continue its business or be put to very large and useless expense by way of litigation, and the assets of the property be wasted thereby;

That plaintiff is the holder of more than one-tenth (1/10) of the capital stock of the said corporation defendant, in his own name and person, fully paid up, and plaintiff avers that by reason of the facts aforesaid, the said corporation should be dissolved, and that a receiver should be appointed to take charge of the business and affairs of said corporation, that its property may be preserved, its creditors paid, and its assets cared for;

Wherefore, plaintiff prays for the order of this Court, appointing a receiver herein, to take charge of the affairs of said corporation, and conduct and manage the same, with a view to its dissolution, under the orders and directions of this Court, and that upon the filing of this complaint, the Court appoint a receiver and fix the amount of bonds to be given by him upon his taking the oath of said appointment; that the Exploration Mercantile Company and the directors of said corporation and each of them

be enjoined and restrained from exercising any of its powers or doing any business except through, by and under said receiver; and for such other and further relief as to the Court may seem meet and proper in the premises.

THOMPSON, MOREHOUSE & THOMPSON,
Attorneys for Plaintiff.

State of Nevada,
County of Esmeralda,—ss.

W. C. Stone, being first duly sworn, deposes and says: that he is the plaintiff in the above-entitled action; that he has heard read the foregoing complaint, and knows the contents thereof, and the same is true of his own knowledge, except as to the matters therein stated on his information or belief, and as to those matters, he believes it to be true.

WALTER C. STONE.

Subscribed and sworn to before me this 6th day of August, 1908.

[Seal]

I. S. THOMPSON,
Notary Public.”

—and thereupon, said complaint served on said corporation, and the said corporation duly appeared therein, and such proceedings were had in said State Court, that C. E. Wylie was appointed receiver of said corporation, and duly qualified and he ever since has been, and now is the duly qualified and acting receiver of said corporation, the said Exploration Mercantile Company, and the said receiver at once took possession of the assets of said corporation, and ever since has had and now has the possession there-

of; that said District Court of the First Judicial District of the State of Nevada, in and for the County of Esmeralda, is a court of general jurisdiction, and by the filing of said complaint, and the appearance of said corporation, acquired jurisdiction of the subject matter of said action, and of the person of said corporation and complete jurisdiction, control and possession of the assets of said corporation, and had acquired such jurisdiction and possession of the assets of said corporation long prior to the filing of the petition herein by the creditors of said corporation, in this Honorable Court, and said Walter C. Stone avers, that said proceeding in said State Court was not an act of bankruptcy, and that said corporation has assets which at a fair valuation, far exceed its debts and is not insolvent, and therefore Walter C. Stone insists upon the exemption of said corporation from these proceedings in bankruptcy in this Hon. Court, and says that not this court but the District Court of the First Judicial District of the State of Nevada, in and for the County of Esmeralda, has jurisdiction in the premises.

THOMPSON, MOREHOUSE & THOMPSON,
Attorneys for said Walter C. Stone.

State of Nevada,
County of Esmeralda,—ss.

Walter C. Stone, being duly sworn, says: That he is the Walter C. Stone plaintiff in the action pending in said State Court, as set forth in this Plea,

and that the foregoing Plea is true in point of fact, and not interposed for delay.

WALTER C. STONE.

Subscribed and sworn to before me this 15th day of September, A. D. 1908.

[Seal] I. S. THOMPSON,
Notary Public in and for the County of Esmeralda,
State of Nevada.

I hereby certify that in my opinion the foregoing Plea is well founded in point of law.

H. V. MOREHOUSE,
Of Counsel for said Walter C. Stone.

[Endorsed]: No. 103. In the District Court of the United States in and for the District of Nevada. In the Matter of the Exploration Mercantile Company (a Corporation), an Alleged Bankrupt. Plea to Jurisdiction. Filed Septr. 17, 1908 at 9 o'clock A. M. T. J. Edwards, Clerk. Thompson, Morehouse & Thompson.

[Verdict.]

*In the District Court of the United States, in and for
the District of Nevada.*

In the Matter of EXPLORATION MERCANTILE COMPANY (a Corporation),
An Alleged Bankrupt.

INTERROGATORY No. 1.

Whether on the 6th day of August, 1908, the date of the appointment of C. E. Wylie as Receiver of the Exploration Mercantile Company by the District

Court of the First Judicial District of the State of Nevada in the case of W. C. Stone vs. Exploration Mercantile Company, the aggregate of the property of the said Exploration Mercantile Company was, at a fair valuation, sufficient in amount to pay its debts.

Answer: No.

INTERROGATORY No. 2.

Whether on the 12th day of September, 1908, the date of the filing of the petition in bankruptcy in these proceedings, the aggregate of the property of said Exploration Mercantile Company was, at a fair valuation, sufficient in amount to pay its debts.

Answer: No.

INTERROGATORY No. 3.

Whether on the 6th day of August, A. D. 1908, the Exploration Mercantile Company, being insolvent, applied for a Receiver for its property.

Answer: Yes.

Dated this 8th day of July, 1909.

Attest: S. J. HODGKINSON,

Foreman.

[Endorsed]: No. 103. U. S. Dist. Court, Dist. of Nevada. In re Exploration Mercantile Company. In Bankruptcy. Verdict. Filed July 8, 1909 at 4:15 o'clock P. M. T. J. Edwards, Clerk.

[Certain Proceedings Had July 9, 1909.]

*In the District Court of the United States, in and for
the District of Nevada.*

In the Matter of EXPLORATION MERCANTILE COMPANY (a Corporation),
An Alleged Bankrupt.

July 9th, 1909.

Mr. CARNEY.—If your Honor please, we will ask at this time for an order that the defendant, an alleged bankrupt, be adjudicated a bankrupt.

Mr. MOREHOUSE.—We wish to make this motion, if your Honor please:

[Motion to Stay Entry of Decree or Judgment on Verdict.]

Comes now the Exploration Mercantile Company, an alleged Bankrupt, and moves the Court to desist and stay an entry of a decree or judgment upon the verdict of the jury herein upon the grounds:

1st. That the petition of the petitioners herein does not state a cause of action herein, in this, to wit, that no act or acts of bankruptcy are alleged or set forth in said petition;

2d. That the finding of the jury that the corporation, defendant herein, applied, while insolvent, for a receiver, is not a finding of fact, but a conclusion of law;

3d. That it appears upon the face of said petition that W. C. Stone, a stockholder, and not the corporation, applied for the appointment of a receiver; and that the finding of the jury that the corporation

applied for a receiver is contrary to the averments of said petition, and outside of any issue raised by the pleadings herein;

4th. That it appears upon the face of the petition that the only proceedings in the State Court were by W. C. Stone, and that the proceedings in the State Court are binding upon this Court, and cannot be contradicted by evidence aliunde in a collateral proceeding like this is;

6th. That the verdict of the jury is against law;

7th. That this Court has no jurisdiction to enter a decree of adjudication.

The COURT.—The motion will be overruled.

Mr. MOREHOUSE.—To which ruling we save an exception.

The COURT.—The exception may be entered. The order of adjudication will be entered, and I will sign the documents in chambers.

[Endorsed]: No. 103. In the District Court of the United States, in and for the District of Nevada. In the Matter of Exploration Mercantile Co., a Corporation, an Alleged Bankrupt. Motion to Stay Entry of Decree or Judgment upon the Verdict of the Jury. Filed July 16, 1909, at 1:30 o'clock P. M. T. J. Edwards, Clerk.

[**Opinion of District Court.**]

*In the District Court of the United States, in and
for the District of Nevada.*

No. 103.

In the Matter of EXPLORATION MERCANTILE COMPANY (a Corporation),

An Alleged Bankrupt.

DETCHE & CARNEY, J. L. KENNEDY,
ROBERTS, RICHARDS & FOWLER,
for Petitioning Creditors.

THOMPSON, MOREHOUSE & THOMPSON,
for Defendant.

FARRINGTON, District Judge.—A jury having found that the Exploration Mercantile Company committed an act of bankruptcy by applying for a receiver while it was insolvent, a motion is now made in arrest of adjudication because of the alleged insufficiency of the creditors' petition.

It is averred in the amended petition that "at the date of filing the original petition herein, to wit, September 12th, 1908, for more than four months continuously next prior thereto and ever since said time, the aggregate of said Exploration Mercantile Company's property, at a fair valuation, amounted to less than the sum of Sixty Thousand Dollars, and that at all the said times its debts were in excess of Seventy-four Thousand Dollars."

This is a sufficient allegation that the Exploration Mercantile Company was insolvent August 6th, 1908, when an application was made to the State Court for

appointment of a receiver for the property of the company.

It is next alleged that the entire capital stock of the company consists of 50,000 shares of the par value of one dollar each, of which W. C. Stone owns 48,000 shares, F. G. Hobbs, 1,000 shares and C. E. Wylie, 1,000 shares; that these three persons not only owned all the capital stock, but they constitute the entire board of directors of said corporation, Stone being its president, Wylie its vice-president, and Hobbs its secretary and treasurer; that these three persons conspired and agreed to evade the provisions of the Bankrupt Act, and to prevent creditors from obtaining a knowledge of the company's affairs, and from participating in the choice of a trustee; to hinder, delay and defraud the creditors of the company, and to force them to accept less than the full amount of their claims; "that in pursuance of said conspiracy and agreement said directors and officers, acting for and on behalf, and as the act and deed, of said corporation, which was then and there insolvent as aforesaid, on the 6th day of August, A. D. 1908, caused to be filed in the District Court of the First Judicial District of the State of Nevada, in and for the County of Esmeralda, an application praying for the appointment of a receiver with a view to the dissolution of said corporation." The petition so caused to be filed was presented by the said W. C. Stone. It was averred therein that the assets of the company amounted to \$95,000, while its liabilities were but \$65,000; that owing to depressed conditions

in business and the difficulty of making collections, the assets of the Company were in danger of being wasted through attachment or litigation; that the plaintiff Stone is the holder of more than one-tenth of the capital stock of the corporation, and "that said corporation should be dissolved and that a receiver should be appointed to take charge of the business and affairs of said corporation, that its property may be preserved; its creditors paid, and its assets cared for." The prayer, in substance, was that a receiver be appointed to manage the affairs of the company with a view to its dissolution. The creditors' petition also alleges that on the same day, August 6th, 1908, the above-mentioned petition was filed, summons was issued, on which said Wylie in pursuance of said conspiracy, and as the act of said corporation, indorsed an admission of service; that on the same day the said directors and officers, as the act of said corporation, caused to be filed in said court and cause an appearance and application for the appointment of a receiver of the property of said company. Said appearance reads in part as follows: "W. C. Stone, Plaintiff, vs. Exploration Mercantile Company, a corporation, Defendant. Now comes C. E. Wylie, manager and one of the directors of the above-named defendant, and enters the appearance of the said defendant in the above-entitled cause, and asks the above-entitled court to appoint as receiver of said defendant, C. E. Wylie, the undersigned, one of the directors of said corporation. C. E. Wylie, Manager and Director of the Exploration Mercantile Company."

It is further alleged in the creditors' petition that on the same day "the directors and officers of said Exploration Mercantile Company, a corporation, acting for and on behalf, and as the act and deed, of said corporation, which was then and there insolvent as aforesaid, moved the said State Court upon the said pleadings as above set forth, for an order, and said State Court, on said day made its order, appointing said C. E. Wylie receiver," etc. On the following day said Wylie entered upon the duties of his office as such receiver. That on September 8th, 1908, and at other times, said Stone in pursuance of said conspiracy, and as the act of said corporation, sought to settle claims against it for sixty cents on the dollar; that ever since August 6th, 1908, said directors and officers have refused and still refuse petitioners access to the books of the company, and at all times have refused to permit petitioners' representatives to take or assist in taking an inventory of the property of the corporation. Near the end of the creditors' petition is this statement: "Ever since said 6th day of August, A. D. 1908, said Exploration Mercantile Company, a corporation, and each and all of said directors and officers have acquiesced in, upheld, ratified and confirmed the said proceedings and application for, and appointment of, said receiver as aforesaid; and said Frank G. Hobbs has ratified and confirmed the same and has since been continuously in the employ of the receiver." The petition concludes with a prayer that the Exploration Mercantile Company be adjudged bankrupt.

This petition having been filed, within due time thereafter the alleged bankrupt filed its answer, demanding a trial by jury. By consent of both parties the following issues in the form here set out were submitted to the jury:

“Whether on the 6th day of August, 1908, the date of the appointment of C. E. Wylie as receiver of the Exploration Mercantile Company by the District Court of the First Judicial District of the State of Nevada in the case of W. C. Stone vs. Exploration Mercantile Company, the aggregate of the property of the said Exploration Mercantile Company was, at a fair valuation, sufficient in amount to pay its debts.”

“Whether on the 12th day of September, 1908, the date of the filing of the petition in bankruptcy in these proceedings, the aggregate of the property of said Exploration Mercantile Company was, at a fair valuation, sufficient in amount to pay its debts.”

“Whether on the 6th day of August, A. D. 1908, the Exploration Mercantile Company, being insolvent, applied for a receiver for its property.”

The jury, after having heard the evidence and listened to the instructions of the Court, returned a negative answer to the first and second interrogatories, and an affirmative answer to the third.

Among the grounds urged in arrest of judgment and of the order of adjudication, there is no intimation that the verdict is not sustained by the evidence. The several grounds may be resolved into one comprehensive objection: the creditors' petition failed to show that defendant was guilty of an act of

bankruptcy in this, that it fails to show that defendant applied for a receiver for its property.

It is contended that the petition not only fails to show that the corporation applied for a receiver, but under the Nevada statute it was and is impossible for any Nevada corporation to make such an application.

Section 7 of the General Incorporation Law of Nevada (Stats. 1903, p. 121) provides that every corporation created under the provisions of this Act shall have power "To wind up and dissolve itself, or to be wound up and dissolved in the manner hereinafter mentioned."

The power granted is the power "to wind up and dissolve itself or to be wound up and dissolved in the manner hereinafter mentioned." It is the winding up and dissolution of the corporation which is provided for. There is no attempt to circumscribe or limit the power to ask the appointment of a receiver. Receivers are frequently asked and appointed for corporations when there is no thought of dissolution.

Section 89 of the Act provides a method of dissolution by voluntary action of the stockholders, officers and creditors.

Section 94, under which the proceedings in this case were had, provides for winding up a corporation by the Court, and reads as follows:

"Receiverships and Dissolution by the Court.

Sec. 94. Whenever a corporation has in ten successive years failed to pay dividends amounting in all to five per cent of its entire outstanding capital,

or has willfully violated its charter, or its trustees or directors have been guilty of fraud or collusion or gross mismanagement in the conduct or control of its affairs, or its assets are in danger of waste through attachment, litigation, or otherwise, or said corporation has abandoned its business and has not proceeded diligently to wind up its affairs, or to distribute its assets in a reasonable time, or has become insolvent and is not about to resume its business with safety to the public, any holder or holders of one-tenth of the capital stock may apply to the District Court, held in the district where the corporation has its principal place of business, for an order dissolving the corporation and appointing a receiver to wind up its affairs, and may by injunction restrain the corporation from exercising any of its powers or doing any business whatsoever, except by and through a receiver appointed by the Court. Such court may, if good cause exist therefor, appoint one or more receivers for such purpose, but in all cases directors or trustees who have been guilty of no negligence nor active breach of duty shall have the right to be preferred in making such appointment, and such court may at any time for sufficient cause make a decree dissolving said corporation and terminating its existence.”

Subsequent sections provide for notice to creditors, presentation of claims to the receiver within a limited time, the barring of claims not so presented, the sale of property and the distribution of assets. Although the Act does not provide for the discharge of the debtor, and is not so entitled, it is essentially

an insolvency act. The winding up of the corporation discharges its debts.

“An insolvent law is a law for the relief of creditors by an equal distribution among them of the assets of the debtor, but does not necessarily involve the discharge of the debtor.”

Harbough, Assignee, vs. Costello, 184 Ill. 110;
In re Merchants' Ins. Co., 17 Fed. Cas. No. 9441;
Moody vs. Development Co., 102 Me. 365;
Salmon vs. Salmon, 143 Fed. 395.

“In so far as the person and the subject-matter falls within the jurisdiction of the Bankrupt Act and is within the jurisdiction of the bankrupt court, the State insolvency law is superseded and cannot be invoked.”

Littlefield vs. Gay, 96 Me. 423;
Westcott & Co. vs. Barry, 69 N. H. 505;
In re Curtis, 91 Fed. 737.

In the absence of statutory authority courts of equity have no power to wind up the affairs of a corporation.

Beach on Receivers, sec. 86.

But when from any cause the property of a corporation is in imminent danger of waste or destruction and a receivership is necessary and there is no other adequate relief, a court of equity has inherent power to appoint a receiver to take charge of the corporate assets and affairs; but this power is to preserve and not to dissolve a corporation, but as soon as the necessity for such supervision ceases, the Court must lift its hands and retire.

Beach on Receivers, sec. 421.

The doctrine that a receiver cannot be appointed for corporate property on application of the corporation itself applies quite as strongly to persons as to corporations.

17 Ency. Pl. & Pr. p. 687.

If the rule not only forbids the appointment, but also renders it impossible for a debtor to apply for the appointment of a receiver over his own property, why did Congress declare it an act of bankruptcy for a person being insolvent to apply for a receiver? It is unreasonable to suppose that Congress would prescribe an act which no one can commit. There is a difference between asking and receiving; between the application for and the granting of a receivership. A corporation through its officers may apply for relief which a court may properly and justly refuse, or which it has no power to grant. When a person who is actually insolvent applies for a receiver for his property, the act of bankruptcy is committed, and this is so irrespective of any action which may be had in the court to which the application is made. The application is in itself an admission that the debtor's affairs require supervision.

The fact that certain powers are conferred by statute upon corporations does not mean that a corporation is unable to perform any act beyond the scope of such enumerated powers. The statute restricts the authority of the corporation and fixes the limits beyond which its acts are unlawful and in excess of the powers conferred. If it were otherwise a corporation could not be guilty of an ultra vires act, a tort, or a misdemeanor. Corporations

commit wrongful, unlawful and even criminal acts, and they are held responsible therefor even though the act is not the formal act of the corporation.

United States vs. McAndrews & Forbes Co., 149
Fed. 823, 835;

Clark on Corp., sec. 63.

“There may be actual corporate conduct,” says the Court in *People vs. North River Sugar-Refining Co.*, 121 N. Y. 582, 619, “which is not formal corporate action; and where that conduct is directed or produced by the whole body, both of officers and stockholders, by every living instrumentality which can possess and wield the corporate franchise, that conduct is of a corporate character, and, if illegal and injurious, may deserve and receive the penalty of dissolution.”

A corporation is an association of natural persons united as one body and endowed by law with the capacity to act in many respects as an individual, as a separate and distinct entity, but a corporation can only act or think or purpose through its officers, directors or stockholders. It is inconceivable that a corporation should form or carry into effect any design which is contrary to the wishes of its directors, officers and stockholders; it exists to carry out their purposes and their plans. The conception that a corporation is a legal entity existing separate, apart and distinct from the natural persons who compose it is a fiction which has been introduced for convenience in making contracts, acquiring property, suing and being sued, and to secure limited liability on the part of stockholders.

“It is a certain rule,” says Lord Mansfield, Chief Justice, “that a fiction of law shall never be contradicted so as to defeat the end for which it was invented, but for every other purpose it may be contradicted.”

Johnson vs. Smith, 2 Burr. 962;

Wood vs. Ferguson, 7 Ohio St. 29;

Clark on Corp., p. 9.

The fiction of a corporate entity was never invented to promote injustice or defraud, and when it is used for such a purpose it should be disregarded, and the actual fact should be ascertained.

In re Rieger, Kapner & Altman, 157 Fed. 609,
613;

Bank vs. Trebien, 59 Ohio St. 316;

State vs. Standard Oil Co., 15 L. R. A. 145, 153,
34 L. R. A. 541;

People vs. N. R. S. R. Co., 121 N. Y. 582, 613;

United States vs. Milwaukee, etc. Co., 142 Fed.
247, 252;

Holbrook, Cabot & Rollins Corp. vs. Perkins,
147 Fed. 166, 169;

Cawthra vs. Stewart, 109 N. Y. S. 770;

U. S. & Mexican Trust Co. vs. Delaware etc. Co.,
112 S. W. 447, 460;

Southern E. S. Co. vs. State, 44 So. Rep. 785,
790;

7 Am. & Eng. Ency. L. 633, 634;

1 Cook on Corp. (5 ed.) p. 27.

“For certain purposes the law will recognize the corporation as an entity distinct from the individual

stockholders; but that fiction is only resorted to for the purpose of working out the lawful objects of the corporation. It is never resorted to when it would work an injury to any one, or allow the corporation to perpetrate a fraud upon anybody.”

The Sportsman Shot Co. vs. American S. & L. Co., 30 Wkly. Law Bul. 87.

In *United States vs. Milwaukee Refrigerator Transit Co. et al.*, 142 Fed. 247, 255, it was charged that the Transit Company was a dummy corporation organized, owned and operated by the stockholders of the Brewing Company as a device to cover the receipt of rebates on interstate shipments of beer. After an exhaustive examination of the authorities, the Court stated the principle thus:

“If any general rule can be laid down, in the present state of authority, it is that a corporation will be looked upon as a legal entity as a general rule, and until sufficient reason to the contrary appears; but, when the motion of legal entity is used to defeat public convenience, justify wrong, protect fraud, or defend crime, the law will regard the corporation as an association of persons.”

In *re Reiger et al.*, 157 Fed. 609, a proceeding in bankruptcy, the bankrupts were copartners; in the course of their business they had bought 99 per cent of the outstanding stock of a corporation, the remaining shares being held by relatives of one of the copartners. Receivers having been appointed for the partnership assets, an application was made to extend the receivership to the property of the corporation. It was charged that the bankrupts having

abandoned the partnership business, were still in control of the business and property of the corporation, and if permitted to remain in control they would remove and dispose of it. The Court held that all the property of the corporation belonged to the copartners, and entirely ignored the fact that the property belonged to a corporation. The Court said:

“The fiction of legal corporate entity cannot be so applied by the partners as to work a fraud on a part of their creditors, or hinder and delay them in the collection of their claims, and thus defeat the provisions of the bankruptcy act. The doctrine of corporate entity is not so sacred that a court of equity, looking through forms to the substance of things, may not in a proper case ignore it to preserve the rights of innocent parties or to circumvent fraud.”

In *Bank vs. Trebein Co.*, 59 Ohio St. 316, 326, a failing debtor formed a corporation composed of himself and certain members of his family, to which he transferred all his property in exchange for stock of which he received substantially all. He immediately placed all his stock, except one share, with certain of his creditors as security for their claims, and then as president and general manager of the corporation, retained the control and management of the property and business which he had before the corporation was formed. The Court declared the corporation, in substance another Trebein, saying:

“The fiction by which an ideal legal entity is attributed to a duly formed incorporated company, existing separate and apart from the individuals

composing it is of such general utility and application, as frequently to induce the belief that it must be universal, and be, in all cases adhered to, although the greatest frauds may thereby be perpetrated under the fiction as a shield. But modern cases, sustained by the best text-writers, confine the fiction to the purposes for which it was adopted—convenience in the transaction of business and in suing and being sued in its corporate name, and the continuance of its rights and liabilities, unaffected by changes in its corporate members; and have repudiated it in all cases where it has been insisted on as a protection to fraud or any other illegal transaction.”

In *Cawthra v. Stewart*, 109 N. Y. S. 770, Stewart owned 98 shares of the capital stock of a corporation known as L. C. Stewart & Co. and controlled the other two shares. Cawthra, induced by false representations made by Stewart, who was then a director of the company and its president, invested \$3,000 in the corporate business and received half the stock. Suit was brought against Stewart and the Company to rescind the stock contract and recover the amount paid. The corporation demurred that it was a distinct, definite entity, and not liable for any acts of Stewart which it had not authorized. The Court said:

“Strictly speaking, such terms as ‘authority’ and ‘ratification’ and others which imply separate personalities are inappropriate. We do not have a case of agency, but of identity. It cannot properly be said that the corporation could clothe Stewart with authority any more than that Stewart could clothe

himself with authority. He was the corporation, and it was only another form of him. Whatever he did with respect to the matters he was handling under the guise of a corporation was the act of the corporation.”

In the case of *State vs. Standard Oil Co.*, 15 L. R. A., 145, it appears that the stockholders in various corporations and a number of copartnerships interested in the oil business agreed to transfer their interests in their several properties, and all their corporate stock, to certain trustees; they were to receive in lieu thereof trust certificates equal in par value to the stock which they surrendered. There was no act on the part of the corporation, no formal act, it was simply the act of the stockholders of these various corporations, and of course that meant all the officers and the directors. It was held that this action of the stockholders was, under the circumstances, to be regarded as the act of the corporation.

The following extract is from the opinion:

“Applying, then, the principle that a corporation is simply an association of natural persons, united in one body under a special denomination, and vested by the policy of the law with the capacity of acting in several respects as an individual, and disregarding the mere fiction of a separate legal entity, since to regard it in an inquiry like the one before us would be subversive of the purpose for which it was invented, is there, upon an analysis of the agreement, room for doubt that the act of all the stockholders, officers and directors of the company in signing it should be imputed to them as an act done in their

capacity as a corporation? We think not, since thereby all the property and business of the company is, and was intended to be, virtually transferred to the Standard Oil Trust, and is controlled through its trustees, as effectually as if a formal transfer had been made by the directors of the company. On a question of this kind, the fact must constantly be kept in view that the metaphysical entity has no thought or will of its own; that every act ascribed to it emanates from and is the act of the individuals personated by it; and that it can no more do an act, or refrain from doing it, contrary to the will of these natural persons, than a house could be said to act independently of the will of its owner; and, where an act is ascribed to it, it must be understood to be the act of the persons associated as a corporation, and, whether done in their capacity as corporators or as individuals must be determined by the nature and tendency of the act. It therefore follows, as we think, from the discussion we have given the subject, that where all, or a majority, of the stockholders comprising a corporation to do an act which is designed to affect the property and business of the company, and which, through the control their numbers given them over the selection and conduct of the corporate agencies, does affect the property and business of the company, in the same manner as if it had been a formal resolution of its board of directors, and the act so done is ultra vires of the corporation and against public policy, and was done by them in their individual capacity for the purpose

of concealing their real purpose and object, the act should be regarded as the act of the corporation; and, to prevent the abuse of corporate power, may be challenged as such by the state in a proceeding in quo warranto.”

While the motion now under consideration rests upon the alleged insufficiency of the creditors' petition, it may not be amiss to consider how completely certain allegations of the petition are supported and illustrated by the evidence.

The creditors were refused access to the books. Even after proceedings in the State Court were commenced the books were withheld and the creditors informed if they wished to see the accounts they must procure an order from that court. Mr. Ruhl was directed by the State Court to expert the books, but even he, armed with this authority, was not permitted to examine all of them; the accounts of Mr. Stone were withheld, and but a semblance of full exhibition was had. An order to produce books and papers was required in this court in addition to the subpoena duces tecum. A number of leaves were torn from the journal by Mr. Stone, and either lost or destroyed. Mr. Stone gives as an excuse for such mutilation of the journal that the agent of Bradstreet insisted on seeing the books. In the merchandise account only those purchases of merchandise were recorded for which cash payments had been made. Credit purchases of merchandise were not shown by that account, and could be ascertained only by examination of the various statements which ac-

companied each purchase. Obviously books kept in such a manner do not show liabilities; they conceal the real conditions.

An auto account, an account with Mr. Pryor, and a very active stock and commission account show frequent and considerable investments of Exploration Mercantile Company money. These, the book-keeper Mr. Hobbs, stated were really accounts of Mr. Stone. The transfers into Mr. Stone's personal account were shown, if at all, on the destroyed journal leaves. The detached ledger leaves showing Mr. Stone's personal account were withheld from examination until an order for production of books and papers was made in this court during the progress of the trial. An entry made December 31st, 1907, credits Mr. Stone with wages, \$36,000, and rent \$12,000; total \$48,000. In reference to these matters Mr. Hobbs testifies as follows:

“(By Mr. CARNEY.)

Q. I will ask you to examine Petitioners' Exhibit No. 9, being the journal, on page 31, under the head of 'Profit and Loss,' and 'Rent,' what was the amount of rent for that store building during the year 1906? A. \$3,600.

Q. That is at the rate of \$300 per month.

A. Yes, sir.

Q. That entry was made by yourself?

A. It was.

Q. As the treasurer of the corporation?

A. Yes, sir.

Q. I will ask you to examine this sheet known as 'Account Walter C. Stone,' on December 31, 1907

(hands to witness) for \$12,000; when was that \$12,000 placed thereon, the figures?

A. When was it placed there?

Q. Yes. A. On December 31st, 1907.

Q. 1907? A. Yes.

Q. I will ask you to examine an item known as 'Sundries' on December 31st, 1907, being an amount of \$55,801.50. A. Yes, sir.

Q. What does that include?

A. I could not tell unless I had the journal page for that, Journal 50, or I could get it from the ledger with time, it will take a little time to figure these things.

Q. This is the journal, is it not? (Hands book to witness.) A. Yes, sir, that page is missing.

Q. That has reference to the page that is missing, has it? A. Yes, sir.

Q. And those pages that are missing included these items of account?

A. The journal entries.

Q. Have you any idea what that fifty-five thousand odd dollars is for?

A. I have an idea, but I could not give it to you unless I could look over the ledger records, I could get it from that.

Q. I will ask you to look at the item of December 31st, 'Wages to date, \$36,000.' A. Yes, sir.

Q. When was that entry made?

A. December 31st, 1907.

Q. \$36,000? A. Yes, sir.

Q. I wish you would examine that paper and see if that was not \$12,000?

A. It has been changed, or the journal record was changed at that particular time, at that same time.

Q. It had been changed at that time?

A. Yes, it was changed at that time.

Q. There has been considerable diligence on your part, on Mr. Stone's part and on Mr. Wylie's part since the filing of this petition in bankruptcy to show by the books that this institution was solvent on the 6th day of August, 1908, has there not?

A. Yes, sir.

Q. I will ask you to look at the footings of \$87,439.89, and ask you whether or not those footings have not been changed?

A. The book records were changed at that particular time.

Q. They were changed from \$12,000 to \$36,000?

A. I don't know what the changes were; I would not state what the change was, but I remember of making that change myself; I made it.

The COURT.—When did you say that change was made? A. At the time of entry.

Q. (Mr. CARNEY.) When was the entry made?

A. December 31st, 1907.

Q. Do you know what wages Mr. Stone received?

A. The wages, no, unless I could figure it up.

Q. What was his salary as the president of the corporation?

A. I could not tell unless I figured it up from the ledger.

Q. You have no recollection as to what Mr. Stone drew as an officer of that corporation for a salary?

A. It went in as a lump sum, I believe, at that particular time.

Q. As a matter of fact, Mr. Stone never received more than \$300 per month, did he, during 1906, as wages?

A. I don't remember, I could not tell.

Q. Did you ever have any meeting as to what wages Mr. Stone should receive as an officer of this corporation? A. Yes, sir.

Q. When was that meeting?

A. At the time this entry was made, I think, some time around there.

Q. Are there any records of it in the minute-book of the Exploration Mercantile Company?

A. I think so.

Q. Will you kindly produce them.

A. I am not absolutely certain, I think there was.

Q. I hand you the minute-book of the corporation (hands to witness), do you find any memorandum there?

A. It says, 'Meeting of the Board of Directors of the Exploration Mercantile Company. This meeting of the Board of Directors held on the 2d day of January, 1908, in the office of the Company, present W. C. Stone, Frank G. Hobbs, C. E. Wylie. At this meeting the Board examined the books of the corporation kept by its secretary, Frank G. Hobbs, and the balances struck by him, and on motion it was resolved that the said accounts are correct, and the balances are true, and that the same be and are hereby adopted and affirmed.'

Q. Those are minutes placed there by typewriting?

A. Yes, sir, these are typewritten minutes.

Q. Where were they prepared?

A. I don't know."

The reasons why Messrs. Stone, Wylie and Hobbs objected to an examination of the books are obvious. There is some testimony to the effect that Mr. Hobbs and Mr. Wylie objected to the petition presented by Mr. Stone in the State Court, but in the light of their conduct I am satisfied their objections were not serious. The refusal to permit examination of the books, and the adoption and use of a method of book-keeping which tended to conceal the real condition of the business, were calculated to hinder and delay creditors. In this Messrs. Stone, Wylie and Hobbs participated. The conduct of each of them indicates that he knew there was something to be concealed from the creditors, and also that he knew the concern was insolvent. They seem to have agreed upon Mr. Stone's salary after the services had been rendered. The term of service could not have exceeded two years, for which they fixed a salary of \$18,000 per year. During a portion of these two years Mr. Stone was travelling in Europe and China.

Is it reasonable to suppose that a concern having a total capital stock of \$50,000, paying its president a salary of \$18,000 per year and a rent of \$12,000 per year, can be operated at a profit? The evidence is very conclusive that each of the three men knew the business was running behind, and wished to conceal

that fact. When the creditors were about to commence attachment suits, Mr. Stone, who had received the \$48,000 credit, who had mutilated the journal, who had withheld his own account from examination, who was then the actual owner of 96 per cent. of the stock of the concern, filed in the State Court a petition asking that Court to wind up the corporation, and place its property in the hands of a receiver because litigation was threatened and the assets were likely to be wasted. Mr. Wylie, general manager of the corporation, immediately appeared in court and filed an admission of service for the corporation, and a request that he himself be appointed receiver. This proceeding in the State Court was certainly in harmony with the previous and subsequent conduct of the three men; it was but a part of a scheme to hinder and delay and therefore to defraud the creditors of the Exploration Mercantile Company, and the scheme was participated in, and consistently pushed and carried out by all the officers of the corporation, by its president, secretary and treasurer, general manager and directors, and by all its stockholders.

It is alleged, and the testimony shows, that all the directors, officers and stockholders of the Exploration Mercantile Company, as the act and deed of the corporation, caused the Stone petition to be filed and a receiver to be asked for, and later that they, in behalf of said corporation, as its act and deed, moved the Court for an order appointing Wylie receiver. It is also averred that the corporation ratified the

act. It is also alleged, and amply proven by the testimony, that this was all done to hinder, delay and defraud its creditors; and it is clear from the testimony that these persons, Stone, Wylie and Hobbs, knew the corporation was insolvent at the time the receiver was applied for. Under the shelter of a receivership, which tied the hands of the creditors, they proposed themselves to control its business and conceal its actual condition. Inasmuch as all the stockholders, all the officers and all the directors of this corporation, without exception, are using the distinction between themselves and the corporate entity for the purpose of hindering, delaying and defrauding creditors, that distinction should be disregarded, and the act of applying for a receiver should be imputed to the corporation itself.

The motion in arrest of judgment is denied, and the usual adjudication of bankruptcy will be entered.

[Endorsed]: No. 103. In the District Court of the United States, in and for the District of Nevada. In the Matter of Exploration Mercantile Co., a Corporation, an Alleged Bankrupt. Opinion. Filed July 9th, 1909. T. J. Edwards, Clerk.

[**Order Declaring and Adjudging the Exploration
Mercantile Company Bankrupt.**]

*In the District Court of the United States for the
District of Nevada.*

IN BANKRUPTCY.

In the Matter of EXPLORATION MERCANTILE
COMPANY (a Corporation),
Bankrupt.

At Carson City, in said district, on the 9th day of July, A. D. 1909, before the Honorable E. S. Farrington, Judge of said court in bankruptcy, the petition of The Giant Powder Company Consolidated, a corporation, Pacific Hardware and Steel Company, a corporation, and J. A. Folger and Company, a corporation, that Exploration Mercantile Company, a corporation, be adjudged a bankrupt, within the true intent and meaning of the acts of Congress relating to bankruptcy, having been heard and duly considered, the said Exploration Mercantile Company, a corporation, is hereby declared and adjudged bankrupt accordingly.

Witness the Honorable E. S. FARRINGTON,
Judge of said court, and the seal thereof, at Carson
City, in said district, on the 9th day of July, A. D.
1909.

[Seal]

T. J. EDWARDS,
Clerk.

By H. D. Edwards,
Deputy.

[**Order Referring Matter to Referee in Bankruptcy,
etc.**]

*In the District Court of the United States for the
District of Nevada.*

IN BANKRUPTCY.

In the Matter of EXPLORATION MERCANTILE
COMPANY (a Corporation),
Bankrupt.

Whereas, Exploration Mercantile Company, a corporation, of Goldfield, in the county of Esmeralda and district aforesaid, on the 9th day of July, A. D. 1909, was duly adjudged a bankrupt upon a petition filed in this court against it on the 12th day of September, A. D. 1908, according to the provisions of the acts of Congress relating to bankruptcy.

It is thereupon ordered, that said matter be referred to J. Poujade, Esq., Referee in bankruptcy of this court, to take such further proceedings therein as are required by said acts; and that the said Exploration Mercantile Company, a corporation, shall attend before said referee on the — day of —, at —, and thenceforth shall submit to such orders as may be made by said Referee or by this Court relating to said bankruptcy.

Witness the Honorable E. S. FARRINGTON,
Judge of the said Court, and the seal thereof, at Car-

son City, in said district, on the 9th day of July, A. D. 1909.

[Seal]

T. J. EDWARDS,
Clerk.

By H. D. Edwards,
Deputy.

[Endorsed]: No. 103. U. S. District Court, District of Nevada. In the Matter of Exploration Mercantile Company, a Corporation, Bankrupt. Adjudication and Order of Reference. Filed July 9th, 1909, at 3 o'clock P. M. T. J. Edwards, Clerk. By H. D. Edwards, Deputy Clerk.

[Petition for Writ of Error, etc.]

*In the District Court of the United States, for the
District of Nevada.*

IN BANKRUPTCY—No. 103.

In the Matter of EXPLORATION MERCANTILE
CO. (a Corporation),

An Alleged Bankrupt.

Exploration Mercantile Company, defendant in the above-entitled cause, feeling itself aggrieved by the verdict of the jury, and judgment of adjudication of bankruptcy entered on the ninth day of July, 1909, comes now by Thompson, Morehouse & Thompson, its attorneys, and petitions said court for an order allowing said defendant to prosecute a Writ of Error to the Hon. the United States Circuit Court of Appeals for the Ninth Circuit, under and according to the laws of the United States, in that behalf made

and provided, and also that an order be made, fixing the amount of security which the defendant shall give and furnish upon said Writ of Error, and, that upon the giving of said security, all further proceedings be stayed and suspended until the determination of said Writ of Error by the United States Circuit Court of Appeals for the Ninth Circuit, and your petitioners will ever pray.

THOMPSON, MOREHOUSE & THOMPSON,
Attorneys for Petitioner Exploration Mercantile
Company.

[Assignment of Errors.]

*In the District Court of the United States for the
District of Nevada.*

IN BANKRUPTCY—No. 103.

In the Matter of EXPLORATION MERCANTILE
CO. (a Corporation),

An Alleged Bankrupt.

Comes now the defendant, the Exploration Mercantile Company, and files the following assignment of error, upon which it will rely upon its prosecution upon the Writ of Error in the above-entitled cause, from the verdict of the jury, and the judgment made and entered on the ninth day of July, 1909, in the above-entitled cause.

That the verdict of the jury and the judgment of the Court is erroneous in matter of law, in that:

1.

That the petition in bankruptcy herein by the petitioning creditors does not set out or specify any act of bankruptcy, and does not state facts sufficient to constitute a cause of action in bankruptcy.

2.

That it appears upon the face of said petition that W. C. Stone as a stockholder of the Exploration Mercantile Company, defendant, filed a petition in the District Court for the First Judicial District of the State of Nevada, in and for the County of Esmeralda, under and as provided by Section 94 of the Incorporation Law of the State of Nevada, and that it appears upon the face of said proceedings taken by the said W. C. Stone, that the same was not founded upon insolvency, and that the action of the State Court was not based or founded upon insolvency, and that no issue of insolvency was raised or presented upon which the State Court acted.

3.

That it appears upon the face of the petition filed by the petitioners herein, as a petition in bankruptcy, that said proceeding in the State Court was not brought by the corporation, the Exploration Mercantile Company, and that the said Exploration Mercantile Company never applied for a receiver upon any ground whatever.

4.

That under and by the provisions of Subdivision 4 of Section 3 (as amended in 1903) of the Bankrupt Act of the United States of 1898, to constitute an act

of bankruptcy the corporation defendant herein must apply for a receiver being insolvent, or because of insolvency, a receiver must be appointed upon the application of some other person than the defendant, and it appears upon the face of the petition filed by the petitioning creditors herein, that the alleged acts of bankruptcy were under said subdivision 4 of Section 3 of the Bankrupt Act of the United States of 1898, as amended in 1903; and said petition fails to show that a receiver was appointed because of insolvency; or that said defendant, Exploration Mercantile Company ever applied for a receiver, or that any receiver was ever put in charge of the property of the said defendant, the Exploration Mercantile Company, by reason of insolvency of the said corporation under any law of the State of Nevada.

5.

That by the laws of the State of Nevada, to wit, the Act of the Legislature of the State of Nevada, approved March 16, 1903, and entitled "An Act providing a general corporation law," the defendant corporation herein had no power or authority to apply for the appointment of a receiver, and therefore, could not apply, and being insolvent or otherwise, for the appointment of a receiver over its assets or its properties.

6.

That it appears upon the face of said petition of said creditors that no meeting of the Board of Directors or any stockholders' meeting was ever had or held by said Exploration Mercantile Company, defendant herein.

7.

That the verdict of the jury, that the said Exploration Mercantile Company applied for a receiver, is outside of any issue made or presented by the pleadings herein, and that the Court had no jurisdiction or power upon said verdict, to enter the judgment of adjudication.

8.

That the Court had no jurisdiction of the petition herein, to adjudicate either by the verdict of the jury or by a decree of the Court, that the said Exploration Mercantile Company committed an act of bankruptcy in that no act of bankruptcy is averred in said petition of petitioning creditors or found by the verdict of the jury, or by any decree or order of this court.

9.

That the petition filed herein by the petitioning creditors being based upon the proceedings in the said State Court, is limited to the acts and proceedings in that court and no evidence is permissible to contradict in a collateral proceeding, the action of the State Court, and the action of the State Court is binding and conclusive upon the Federal Court, and that it appears by the action of the State Court in appointing a receiver, that such receiver was not appointed because of insolvency or through or by the corporation, and that the said District Court of the United States has no jurisdiction in the premises.

Wherefore, the said defendant, the Exploration Mercantile Company, plaintiff in error, prays that the judgment of the said Court be reversed and that

said adjudication of bankruptcy be set aside, and such directions be given that full force and efficacy may inure to defendants by reason of the defense set up in their answer, and in their motion made to said District Court not to enter said judgment of adjudication in said cause.

THOMPSON, MOREHOUSE & THOMPSON,
Attys. for Defendants and Plaintiffs in Error.

[Endorsed]: No. 103. In the District Court of the United States for the District of Nevada. In the Matter of the Exploration Mercantile Co., a Corporation, an Alleged Bankrupt. (In Bankruptcy—No. 103.) Petition and Assignment of Errors in Writ of Error. Filed July 16, 1909, at 11:45 o'clock A. M. T. J. Edwards, Clerk. Thompson, Morehouse & Thompson, Attys. for Alleged Bankrupt. Goldfield, Nevada.

[Undertaking on Petition for Writ of Error.]

*In the District Court of the United States for the
District of Nevada.*

IN BANKRUPTCY—No. 103.

In the Matter of EXPLORATION MERCANTILE
CO. (a Corporation),

An Alleged Bankrupt.

Know All Men by These Presents: That we, Exploration Mercantile Company, a corporation, as principal, and Jas. E. McGowan and W. S. Elliott as sureties, are held and firmly bound unto the Pacific Hardware and Steel Company, a corporation,

Giant Powder Company, Consolidated, a corporation, and J. A. Folger and Company, a corporation, petitioning creditors herein, in the sum of Five Hundred (\$500) Dollars, to be paid to the said parties aforesaid, their executors, administrators or assigns, to which payment, well and truly to be made, we bind ourselves, and each of us, jointly and severally, and our and each of our successors, representatives and assigns, firmly by these presents.

Sealed with our seals, and dated this 13th day of July, 1908.

Whereas, the above-named defendant, the plaintiff in error, has sued out a writ of error to the United States Circuit Court of Appeals for the Ninth Circuit to correct the verdict of the jury, and reverse the judgment in the above-entitled cause, by the District Court of the United States for the District of Nevada;

Now, therefore, the condition of this obligation is such, that if the above-named defendant, the Exploration Mercantile Company, shall prosecute said writ to effect and answer all costs and damages, if it shall fail to make good its plea, then this obligation shall be void; otherwise to remain in full force and virtue.

[Seal]

EXPLORATION MERCANTILE COMPANY.

By W. C. STONE,

Prest.

W. S. ELLIOTT.

JAS. E. MCGOWAN.

State of Nevada,
County of Esmeralda,—ss.

Jas. E. McGowan and W. S. Elliott, being first duly sworn, each for himself, says: That he is a resident and householder of the State of Nevada, and that he is worth the sum specified in the above and foregoing bond, over and above all his just debts and liabilities, exclusive of property exempt from execution.

JAS. E. MCGOWAN.

W. S. ELLIOTT.

Subscribed and sworn to before me this 13th day of July, A. D. 1909.

[Seal]

H. M. FARNAM,

Notary Public in and for the County of Esmeralda,
State of Nevada.

The foregoing bond is hereby approved as an undertaking to prosecute the Writ of Error, but it is not approved as a supersedeas.

July 16th, 1909.

E. S. FARRINGTON,
Judge.

[Endorsed]: No. 103. In the District Court of the United States for the District of Nevada. In the Matter of the Exploration Mercantile Co., a Corporation, an Alleged Bankrupt. (In Bankruptcy—No. 103.) Undertaking on Petition for Writ of Error. Filed July 16, 1909, at 11:45 o'clock A. M. T. J. Edwards, Clerk. Thompson, Morehouse & Thompson, Attorneys for Alleged Bankrupt. Goldfield, Nevada.

[Order Allowing Writ of Error, etc.]

*In the District Court of the United States for the
District of Nevada.*

IN BANKRUPTCY—No. 103.

In the Matter of EXPLORATION MERCANTILE
CO. (a Corporation),

An Alleged Bankrupt.

At a stated term, to wit, the May Term, A. D. 1909, of the District Court of the United States, for the District of Nevada, held at the courtroom of said Court, in the city of Carson, State of Nevada, on the 16th day of July, 1909—Present: The Hon. E. S. Farrington, District Judge—in the matter of Exploration Mercantile Company, a corporation, an alleged bankrupt—in bankruptcy No. 103—upon motion of Messrs. Thompson, Morehouse & Thompson, attorneys for defendant, and the filing of a petition for writ of error and assignment of error,

It is ordered that a Writ of Error be and is hereby allowed, to have reviewed, in the United States Circuit Court of Appeals for the Ninth Circuit, the judgment heretofore entered herein, and that the amount of bond on said Writ of Error be and is hereby fixed at Five Hundred (\$500) Dollars, for the prosecution of said writ; said undertaking shall not operate as a supersedeas.

E. S. FARRINGTON,
District Judge.

[Endorsed]: No. 103. In the District Court of the United States for the District of Nevada. In

the Matter of Exploration Mercantile Co., a Corporation, an Alleged Bankrupt. (In Bankruptcy—No. 103.) Order Allowing Writ of Error. Filed July 16, 1909 at 11:45 o'clock A. M. T. J. Edwards, Clerk. Thompson, Morehouse & Thompson, Attys. for Alleged Bankrupt. Goldfield, Nevada.

[Praeipie for Transcript of Record.]

*In the District Court of the United States for the
District of Nevada.*

IN BANKRUPTCY—No. 103.

In the Matter of EXPLORATION MERCANTILE
CO. (a Corporation),

An Alleged Bankrupt.

To the Clerk of the Above-entitled Court:

You will please prepare transcript of the record in this cause, to be filed in the office of the Clerk of the United States Circuit Court of Appeals, for the Ninth Circuit, under the Writ of Error heretofore perfected to said court, and include in said transcript the following: Amended Petition of Creditors; Answer of Defendant; Plea to Jurisdiction; Verdict of Jury; Motion not to Enter Judgment; Order Denying Motion; Judgment Adjudication; Petition for Writ of Error; Assignment of Error; Bond and Approval; Order Allowing Writ of Error; Writ of Error; Citation; and this Praeipie; said transcript to be prepared as required by law, and the rules of this Court, and the rules of the United States Circuit Court of Appeals for the Ninth Circuit, and on

file in the office of the Clerk of said Circuit Court of Appeals, at San Francisco, before the tenth day of August, A. D. 1909.

THOMPSON, MOREHOUSE & THOMPSON,
Attorneys for Defendant and Plaintiff in Error.

[Endorsed]: No. 103. In Bankruptcy. In the District Court of the United States for the District of Nevada. In the Matter of Exploration Mercantile Company, a Corporation, An Alleged Bankrupt. Praecipe for Transcript on Writ of Error. Filed August 3, 1909. T. J. Edwards, Clerk. (3 o'clock P. M.) Thompson, Morehouse & Thompson, Attorneys for Defendant and Plaintiffs in Error. Goldfield, Nevada.

[Certificate of Clerk U. S. District Court to Transcript of Record.]

United States of America,
District of Nevada,—ss.

I, T. J. Edwards, Clerk of the District Court of the United States, for the District of Nevada, hereby certify that the papers contained in the above and foregoing transcript are correct copies of the original papers on file in my office, and are those designated and demanded of me by the attorneys of the defendant and plaintiff in error, by their praecipe served on me, and request made to prepare transcript, in accordance with such praecipe (see page 57), and that the same is true and correct transcript of the record, as demanded by the attorneys for defendant and plaintiff in error.

That the costs of this record, amounting to \$32.60, have been paid by the attorneys for said Exploration Mercantile Company.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court, at Carson City, Nevada, this 11th day of August, A. D. 1909.

[Seal]

T. J. EDWARDS,
Clerk.

*In the District Court for the United States for the
District of Nevada.*

IN BANKRUPTCY—No. 103.

In the Matter of EXPLORATION MERCANTILE
CO. (a Corporation),

An Alleged Bankrupt.

Writ of Error [Original].

The President of the United States, to the Honorable, the Judge of the District Court of the United States, for the District of Nevada:

Because in the record and proceedings, as also in the rendition of the judgment of adjudication upon the verdict of the jury, which is in the District Court before you, between Giant Powder Company, Consolidated; Pacific Hardware and Steel Company, a corporation; and J. A. Folger and Company, a corporation, petitioning creditors herein, and Exploration Mercantile Company, defendant, and plaintiff in error, a manifest error hath happened to the great damage of the Exploration Mercantile Company, plaintiff in error, as by their complaint appears, we, being willing that error, if any hath happened, should

be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, we command you if judgment be therein given, that then under and upon your seal, distinctly and openly you send the record and proceedings aforesaid, with all things concerning the same, to the United States Circuit Court of Appeals for the Ninth Circuit, together with this writ, so that you have the same at the City of San Francisco, State of California, on the 14th day of August, 1909, in the said Circuit Court of Appeals, to be then and there held that the record and proceedings aforesaid may be inspected that the said Circuit Court of Appeals may further cause to be

"WITNESS, the Honorable MELVILLE W. FULLER, Chief Justice of the United States, this 16th day of July, A. D. 1909, and of the Independence of the United States the one hundred and thirty-fourth."
(SEAL)

F. B. Monckton,
Clerk.

District Judge.

Service of the within writ of error and receipt of copy thereof is hereby admitted this 16th day of July, 1909.

ROBERTS, RICHARDS & FOWLER,
DETCHE & CARNEY and
J. L. KENNEDY,

By ROBERTS, RICHARDS & FOWLER,
Attorneys for Petitioning Creditors, and Defendants
in Error.

[Endorsed]: No. 103. In the District Court of the United States for the District of Nevada. In the Matter of the Exploration Mercantile Co. (a Corporation), an Alleged Bankrupt. (In Bankruptcy—No. 103.) Writ of Error. Filed July 16, 1909, at 3:45 o'clock P. M. T. J. Edwards, Clerk. Thompson, Morehouse & Thompson, Attys. for Alleged Bankrupt. Goldfield, Nevada.

[Citation—Original.]

In the District Court of the United States for the District of Nevada.

IN BANKRUPTCY—No. 103.

In the Matter of EXPLORATION MERCANTILE CO. (a Corporation),

An Alleged Bankrupt.

United States of America,—ss.

The President of the United States, to Pacific Hardware and Steel Company, a Corporation, Giant Powder Company, Consolidated, a Corporation, and J. A. Folger and Company, a Corporation, Petitioning Creditors; Messrs. Detch & Carney, Messrs. Roberts, Richards and Fowler, and J. L. Kennedy, Esq., Attorneys for said Petitioning Creditors:

You are hereby cited and admonished to be and appear at the United States Circuit Court of Appeals for the Ninth Circuit, to be held at the City of San Francisco, in the State of California, within thirty (30) days from the date of this Writ, pursuant to a Writ of Error, filed in the clerk's office of the Dis-

trict Court of the United States, for the District of Nevada, wherein Exploration Mercantile Company, a corporation, is plaintiff in error, and you are the defendants in error, to show cause, if any there be, why the judgment in said Writ of Error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the Honorable E. S. FARRINGTON, Judge of the District Court of the United States for the District of Nevada, this 16th day of July, A. D. 1909, of the Independence of the United States, the one hundred and thirty-third.

E. S. FARRINGTON,
District Judge of District Court of the United States, District of Nevada.

[Seal] Attest: T. J. EDWARDS, Clerk.

Service of the within and foregoing citation and receipt of a copy thereof is hereby admitted this 16th day of July, 1909.

ROBERTS, RICHARDS & FOWLER,
DETCHE and CARNEY and
J. L. KENNEDY,

By ROBERTS, RICHARDS & FOWLER,
Attorneys for Petitioning Creditors and Defendants
in Error.

[Endorsed]: No. 103. In the District Court of the United States, District of Nevada. In the Matter of the Exploration Mercantile Co. (a Corporation), an Alleged Bankrupt. (In Bankruptcy—No. 103.) Citation, in Writ of Error. Filed July 16, 1909, at 3:45 o'clock P. M. T. J. Edwards, Clerk. Thomp-

Pacific Hardware and Steel Company et al. 71
son, Morehouse & Thompson, Attys. for Alleged
Bankrupt. Goldfield, Nevada.

[Endorsed]: No. 1745. United States Circuit
Court of Appeals for the Ninth Circuit. The Ex-
ploration Mercantile Company (a Corporation),
Plaintiff in Error, vs. Pacific Hardware and Steel
Company (a Corporation), Giant Powder Company,
Consolidated (a Corporation), and J. A. Folger and
Company (a Corporation), Petitioning Creditors,
Defendants in Error. Transcript of Record. Upon
Writ of Error to the United States District Court
for the District of Nevada.

Filed August 12, 1909.

F. D. MONCKTON,
Clerk.

*In the District Court of the United States in and for
the District of Nevada.*

IN BANKRUPTCY—No. 103.

In the Matter of EXPLORATION MERCANTILE
COMPANY (a Corporation),
An Alleged Bankrupt.

Replication.

These replicants, The Giant Powder Company
Consolidated, a corporation, Pacific Hardware and
Steel Company, a corporation, and J. A. Folger and
Company, a corporation, saving and reserving to
themselves all and all manner of advantages by ex-
ception which may be had and taken to the manifold
errors, uncertainties and insufficiencies of the an-
swer of the said alleged bankrupt, Exploration Mer-

cantile Company, a corporation, for replication thereunto say: That they do and will aver, maintain and prove their said amended petition to be true, certain and sufficient in the law, and that the answer of the said alleged bankrupt is very uncertain, evasive and insufficient in law; that the said proposal of said W. C. Stone to settle the claims of said alleged bankrupt's creditors for not to exceed sixty per centum, confessed in paragraph V of said answer to have been made on the 8th day of September, A. D. 1908, was made four days prior to the filing of the original petition of these replicants and prior to the issuance of any injunction herein, as the records of this Honorable court will show, and the said confessed proposal could not have been made, and it was not made, for the reasons or any thereof alleged in said answer, but was made as stated and for the reasons alleged in said amended petition; that, at the time the demand confessed in paragraph VI of said answer to have been made, although the books and papers of said alleged bankrupt may have been in the nominal custody and control of said C. E. Wylie, one of said officers and directors, as receiver in said proceedings in said State court, each and all of said officers and directors have, ever since the appointment of said receiver, had free access to all said books and papers and have from time to time had control thereof at pleasure; and said alleged bankrupt, its officers or directors could at any time without violating any duty have given access to said books and papers

mentioned in said amended complaint; and it is not true that said demand was refused for the reason that the corporation was in the hands of a receiver or for the reason that its books or papers were in the custody of the law or were not in the custody or control of the officers or directors of said corporation; but, that said demand was refused for the reasons alleged in said amended petition; that said Exploration Mercantile Company or any or all of its officers or directors were not bound to have acquiesced in said proceedings in said State court for the reasons mentioned in said answer or at all. That this honorable court has full and complete jurisdiction in the premises. All which matters and things these replicants are ready to aver, maintain and prove as this honorable court shall direct, and humbly as in and by their amended petition they have already prayed.

THE GIANT POWDER COMPANY CONSOLIDATED,

By C. C. QUINN,

Secretary of Said Corporation.

PACIFIC HARDWARE AND STEEL COMPANY,

By W. H. SCOTT,

Assistant Secretary of Said Corporation.

J. A. FOLGER & CO.,

By R. R. VAIL,

Secretary of Said Corporation.

E. E. ROBERTS,

J. L. KENNEDY,

ROBERT RICHARDS,

Attorneys for Replicants.

United States of America,
Northern District of California,
City and County of San Francisco,—ss:

C. C. Quinn, W. H. Scott and R. R. Vail, do hereby make solemn oath that said C. C. Quinn is secretary of the Giant Powder Company Consolidated, a corporation, one of the petitioners herein; that said W. H. Scott is assistant secretary of the Pacific Hardware and Steel Company, a corporation, one of the petitioners herein; that said R. R. Vail is secretary of J. A. Folger and Company, a corporation, one of the petitioners herein; and that the statements contained in the foregoing replication subscribed by them are true, according to the best of their knowledge, information and belief.

C. C. QUINN.

W. H. SCOTT.

R. R. VAIL.

Before me, J. D. Brown, a notary public in and for the City and County of San Francisco, State of California, this 10th day of November, A. D. 1908.

[Notarial Seal]

J. D. BROWN,

Notary Public in and for the City and County of
San Francisco, State of California.

[Endorsed]: No. 103. In the District Court of the United States in and for the District of Nevada. In the Matter of Exploration Mercantile Company (a Corporation), an Alleged Bankrupt. In Bankruptcy. Replication. Filed November 12th, 1908.

at 10 o'clock A. M. T. J. Edwards, Clerk. E. E. Roberts, J. L. Kennedy and Robert Richards, Attorneys for replicants, Carson, Nevada.

United States of America,
District of Nevada,—ss.

I, T. J. Edwards, Clerk of the District Court of the United States for the District of Nevada, do hereby certify that the above and foregoing is a full, true and correct copy of the original replication now on file and of record in my office.

In Testimony Whereof, I have hereunto set my hand and affixed the Seal of the said Court at my Office in Carson City, this the 23d day of September A. D. 1909, and in the year of our Independence the 134th.

[Seal]

T. J. EDWARDS,
Clerk.

[Endorsed]: No. 103. U. S. District Court, Dist. Nevada. Re Exploration Merc. Co. In Bankruptcy. Replication No. 1745. United States Circuit Court of Appeals for the Ninth Circuit. Filed Sep. 24, 1909. F. D. Monckton, Clerk.



No. 1745.

UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE NINTH CIRCUIT.

THE EXPLORATION MERCANTILE COMPANY
(a Corporation),

Plaintiff in Error,

vs.

PACIFIC HARDWARE AND STEEL COMPANY (a
Corporation), GIANT POWDER COMPANY, CON-
SOLIDATED, (a Corporation), and J. A. FOLGER AND
COMPANY (a Corporation), Petitioning Creditors.

Defendants in Error.

BRIEF OF PLAINTIFF IN ERROR.

FILED

1909-4-1909

UNITED STATES CIRCUIT COURT OF APPEALS

FOR THE NINTH CIRCUIT

THE EXPLORATION MERCANTILE COMPANY (a Corporation),

Plaintiff in Error,

vs.

PACIFIC HARDWARE AND STEEL COMPANY (a Corporation), GIANT POWDER COMPANY, CONSOLIDATED (a Corporation, and J. A. FOLGER AND COMPANY (a Corporation), Petitioning Creditors,

Defendants in Error.

BRIEF OF PLAINTIFF IN ERROR.

STATEMENT OF FACTS.

On the 6th day of August, 1908, Walter C. Stone, as an **individual** stock-holder, filed in the District Court of the First Judicial District of the State of Nevada, in and for the County of Esmeralda, his complaint in writing, the same being fully set out in the transcript on file herein, pages 7, 8, 9 and 10, and caused Summons to be regularly issued thereon.

This complaint was filed under Sec. 94 of the Incorporation law of the State of Nevada, Statutes of Nevada, 1903, p. 121, which reads as follows:

“Sec. 94.—Whenever a corporation has in ten

successive years failed to pay dividends amounting in all to 5 per cent. of its entire outstanding capital, or has wilfully violated its charter, or its Trustees or Directors have been guilty of fraud, or collusion or gross mismanagement in the conduct or control of its affairs, **or its assets are in danger of waste through attachment, litigation or otherwise**, or said corporation has abandoned its business and has not proceeded diligently to wind up its affairs or to distribute its assets in a reasonable time or has become insolvent and is not about to resume its business with safety to the public, **any holder or holders of one-tenth of the capital stock, may apply** to the District Court, held in the District where the corporation has its principal place of business, for **an order dissolving the corporation and appointing a receiver** to wind up its affairs, and may by injunction restrain the corporation from exercising any of its powers or doing any business whatever, except by and through a receiver appointed by the court. Such court may, if good cause exist therefor, appoint one or more receivers for such purpose, but in **all cases Directors or Trustees** who have been guilty of no negligence, nor active breach of duty shall have the right to be preferred in making such appointment, and such court may at any time for sufficient cause make a decree dissolving such corporation and terminating its existence."

The italics are ours. This is the only statutory or other authority in Nevada for the proceedings taken in the State Court, and it will be seen: First, That **only** a stock-holder can take this proceeding and; Second, **Only** a **director** or **trustee**, when no charges are preferred, can be **appointed** receiver.

The defendant in the State Court, and the District Court of the United States was a corporation

of Nevada, (Transcript page 7) under this law.

That Summons was duly served on said corporation (Trans. p. 10), and service admitted, by C. E. Wylie, manager and director, (Trans p. 10); that the corporation duly appeared in the case and said C. E. Wylie asked, as **Director** to be **appointed receiver** (Trans. p. 11); that said **Director** Wylie **was** appointed receiver, gave his bond, and took his oath of office and possession of the property of the corporation as receiver, and has ever since been in the possession of the property of the corporation as **receiver of said State Court.** (Trans. p. 12).

These are all the proceedings in the State Court. These proceedings are charged to be **an act** of bankruptcy **by the corporation.**

After the **receiver** had been in possession of the property of the said corporation from Aug. 7th, 1908, to Sept 12th, 1908, the defendants in error, as petitioning creditors filed a petition in **Involuntary** bankruptcy against the Exploration Mercantile Company, the same thereafter being amended by leave of Court, and the amended petition is fully set out in the Transcript pp. 1 to 15 inclusive.

This amended petition sets up the **said proceeding** in the State Court, as an **act of bankruptcy**, by the orporation. No other act is **alleged** or averred, but it is sought, by **averments** of **conspiracy, fraud,** and **agreement**, of the **officers** of the corporation to **allege** and **claim, dehors** the record of the State Court, that the said proceedings in the State Court was the **act** and **deed** of the **corporation**, and that **while** the complaint in the State Court, **upon its face**, shows under (sup. div. 15, Sec. 1 of Bankrupt law of 1898), that the corporation **was not** insolvent, the averment of the complaint in the State Court being "that said corporation has liabilities in

the sum of Sixty-five Thousand Dollars (\$65,000) and has assets, exceeding the sum of Ninety-five Thousand Dollars (\$95,000.), (Trans. p. 8.) Yet it was at the time insolvent. In other words, that the proceedings in the State Court was a sham and fraud—an imposition upon that court, and **false** in fact.

Process was regularly issued upon the Creditors petition and the defendant appeared and answered:

I. That it took no proceedings in the State Court, but that the same were taken against it. (Trans. p. 16).

II. That it was not insolvent. (Trans. p. 16).

III. That it never **applied** for a receiver. (Trans. p. 16.)

IV. That an attachment suit was brought and issued against it. (Trans. p. 16.)

V. That the directors and officers did not conspire, nor agree to take any measure to hinder, delay or defraud creditors.

VI. That the proceedings in the State Court was not the act or deed of the corporation.

VII. That the only statement by Stone was by way of compromise, and not otherwise and was wholly the result of the acts of the petitioning creditors.

VIII. That it did deny J. C. Kennedy access to the books of the corporation, because the books were not in the possession of the defendant, but in the custody of the officer of the State Court.

IX. That the State Court only had jurisdiction of the property of the defendant.

X. Demanded a jury.

The answer is a specific denial of the averments of the complaint, except as to the proceedings in the State Court, and particularly denied it had com-

mitted an act of bankruptcy or that the proceedings in the State Court was an act of bankruptcy.

At the same time W. C. Stone, plaintiff in the action in the State Court, filed his **separate plea** to the jurisdiction of the District Court under the creditors' petition, which was not replied to or set down for argument.

That thereafter the cause came on for trial before the Court and a jury, and on the 8th day of July, 1909, the jury rendered its verdict upon special issues (Trans. pp 26 and 27) and found:

I. That a fair valuation of defendant's property on the 6th day of Aug. 1907, and

II. On the 12th day of Sept. 1908, was not sufficient in amount to pay its debts, and

III. That the defendant corporation applied for a receiver, being insolvent.

That upon the presentation of the said verdict of the jury, the petitioning creditors moved for an adjudication and **before** any adjudication, the defendant moved in **Arrest of Judgment** upon seven (7) distinct grounds (Trans. pp. 28 and 29) which motion was then and there denied by the Court, and the defendant then and there duly excepted (Trans p. 29) and thereupon an order or judgment of adjudication was given and made and entered (Trans. p. 54). July 9th, 1909.

And thereafter on to wit, the 16th day of July, 1909, the defendant, plaintiff in error here, perfected its writ of error, and filed its assignments of error which we will take up separately:

I

“That the petition in bankkruptcy herein by the petitioning creditors does not set out or specify any act of bankruptcy, and does not state facts suf-

ficient to constitute a cause of action in bankruptcy." (Trans. p. 58). This specification of error assignment was particularly presented to the Court below, in the motion in arrest of judgment, as the 1st ground of said motion (Trans. p. 28).

But so far as this writ of error is concerned, the point could be made for the **first time** in this court.

Western Union Tel. Co. vs. Sklar, 126 Fed.

295;

Kentucky L. Ins. Co. vs. Hamilton. 63 Fed. 93;

Slocum vs. Pomeroy, 6 Crauch 221;

Bond vs. Dustin, 112 U. S. 609;

Lehnen vs. Dickson, 148 U. S. 71;

Now the only act alleged in the petition of the creditors is the **complaint** of W. C. Stone in the State Court, and this writ is the proper remedy and procedure the cause being before a jury.

Duncan vs. Landis 106 Fed. 839;

Elliott vs. Toppner 187 U. S. 327;

Can the facts therein alleged and found by the State Court, be **contradicted** either by averment or proof? We answer "No." If the proceedings in State Court cannot be **attacked collaterly**, either by **averment** or **proof**, then it follows, that for the petition herein to **constitute** a **cause** of action, the **proceeding** in the State Court, upon **its face**, must show an **act of bankruptcy**, and **no evidence dehors** the records of the State Court, can be rendered **admissable** in this **proceeding**, by **averring** a state of facts, which will **contradict** or **impeach** that **record**, and if **averred**, such averment does not make such testimony admissable.

Now a **collateral attack** is defined by Van Fleet on Coll Attack in Sec. 3, Ed. 1892.

"A collateral attack on a judicial proceeding is an attempt to avoid, defeat or evade it, or to deny its

force and effect in some manner not provided by law" and he says,

Van Fleet, on Coll Attack, Sec. 2, Ed. 1892;

"A direct attack on a judicial proceeding is an attempt to avoid or correct it in some manner provided by law."

From this it will be seen that as the United States District Court in this cause has no supervisory jurisdiction over the judgment, order or decree of the State Court.

Peck vs. Jenness 7 How. (U. S.) 612;

That this is an attempt to collaterally attack the proceedings in the State Court. The rule is very nicely and clearly stated in

Morrill vs. Morrill, 20 Ore. 96;

"An attempt to **impeach** the decree in a proceeding not instituted for the **express** purpose of annulling, correcting or modifying the decree or enjoining its execution."

It needs no argument therefore to show that the creditors petition in the U. S. District Court is a bold attempt to **impeach** and **discredit** the proceedings in the State Court. That petition **first sets** out the proceedings in the State Court, and then by averments, mostly conclusions of law, attempts to impeach those proceedings by saying they are not what they purport to be. This very thing was attempted in bankruptcy, in

In re Henry Zeltner Brewing Co., 117 Fed. 799,
and the Court says:

"It is **urged** that under the laws of the state the **proceeding** has been **improperly** resorted to by the **officers** and **directors** resigning their positions in **order** to bring the statute under which a **receiver** was **appointed** into operation, but that is obviously a matter for consideration by the State Court."

The reason of course being that as the proceedings in the State Court could not be attacked collaterally, such reasons should be presented to the State Court, either by motion for a new trial, or some appropriate proceeding in that court, or else by a suit in equity, to set aside the decree.

This rule, to wit: that the proceeding in the State Court can only be tried by the **face of the record** is very old and founded on wise and just conclusions, for we read in

1 Coke's Institutes, 260;

"The rolls being the record, import in them such uncontrollable credit and verity, as they admit of no **averment, plea or proof** to the **contrary**. And if such record be **alleged**, and it be pleaded that there is no such record **it shall be tried only by itself.**"

All judicial records shall be tried by inspection.

Hersey vs. Walsh, 38 Minn. 521;

Harmon vs. Moore, 112 Ind. 221;

Littleton vs. Smith, 119 Ind. 230;

1 Chitty's Pleading, 512;

Harris vs. Leiter, 80 Ill. 307;

Stackhouse vs. Zuntz, 36 La. Am. 529;

Hughes vs. Cummings, 7 Colo. 203;

Earle vs. Earle, 91 Ind. 27;

Phillips vs. Lewis, 109 Ind. 62;

Scott vs. Crews, 70, Mo. 261;

Byram vs. McDowell, 83 Tenn. 581;

Beech vs. Rich. 13 Vt. 595;

And in **Exparte** Lennon, 166 U. S. 548;

And W. B. Conkey Co. vs. Russell, 111 Fed.

417;

The rule is laid down that where the proceedings in the State Court shows jurisdiction upon its face, then the facts averred in the State Court cannot be contradicted in **another** court by **averments**

seeking to show that **such facts** are **false**, and the Supreme Court says:

“It only appears that to be otherwise, by an allegation for the **habeas corpus**, and the question at once arises whether where the requisite citizenship appears **upon the face** of the bill, the jurisdiction of the court can be attacked by evidence **dehors** the record in a **collateral** proceeding by one who was not a party to the bill. **We know of no authority for such action.**”

And in the Conkey case the Circuit Court of Indiana says:

“Notwithstanding parties here in **this** case say that the allegation is **false**, that certain of the defendants are citizens of Indiana, **that issue cannot be tried**, except upon a proper issue and proof being made in **that case** and **not** in this case. ‘It only appears to be otherwise by an **allegation** in the petition for the **habeas corpus**, and the question at once arises, whether when the requisite citizenship appears on the **face** of the bill, as it does in the Conkey case, ‘the jurisdiction can be attacked by evidence dehors the record, in a collateral proceeding by one who was not a party to the bill. We know of no authority for such action.’ Mr Bessette is a stranger to the bill. He seeks collaterally, being a stranger to the bill **to raise an issue** that can only be **raised** in the **original** suit, by the very parties to the bill. I agree with the Supreme Court of the United States that I know of no authority, **and never heard of one** that would **authorize** a stranger to a bill in equity (a man who is not a party to it) to **raise** a question as to whether or not the **averments** in the **sworn** bill were **true** or **false**. **It cannot be done.** In other words, a stranger cannot

fight a battle or wage a contest for the parties to the bill. **That cannot be done.**"

So here. The averments in the creditors petition for bankruptcy sets out fully the proceedings in the State Court. There is no question raised as to the jurisdiction of the State Court, under Sec. 94. Corporation law of Nevada *supra*. The proceeding in the State Court is by a **single** stockholder; as such **stockholder** in his **own** name and the complaint is **sworn** to. In the verification the plaintiff swears "**he is the plaintiff.**" But it is **sought** by the creditors petition in bankruptcy to show by **averment**, that Stone, the **single** stockholder, in **his own** name, and his **individual** capacity, was **not plaintiff**, and that **he did** not bring the **action**, but that the **action** was by the **corporation**. Notwithstanding the further fact that Sec. 94 of the laws of Nevada creates a **purely statutory** action, and does not under any circumstances **permit** or **authorize** the corporation to sue for the appointment of a receiver, and notwithstanding the further **fact**, that the **corporation** is sued as **defendant**, and had to be **so sued** as defendant, yet the **creditors** by their **petition** first, seek to **contradict** the record in the State Court; second, set aside the law of the State of Nevada, which **only** authorizes the Court to entertain a complaint by a stockholder; and third, have an **impossible thing** take place to wit: the corporation sue itself.

At this point, although breaking the continuity of this brief, let us call the attention of the Court to the fact that this statute Sec. 94 of the Corporation law of Nevada **creates** a purely statutory proceeding, and that the measure of the Court's power is the statute, and that statute must be strictly pursued.

This very question arose in

State I. & I. Co. vs. San Francisco, 101 Cal.

135.

Where on page 146 it is said,

“The jurisdiction of the Supreme Court to decree a dissolution of any corporation exists **only** by virtue of statutory authority. It does not possess this authority by virtue of its inherent general jurisdiction in equity. (Neall vs Hill, 16 Cal. 145; French Bank case, 53 Cal. 495; Havemeyer vs. Superior Court 84 Cal. 327) either at the suit of an individual (Folger vs. Col. Ins. Co. 99 Mass. 267) or at the suit of the State (Atty General vs. Utica Ins. Co., 2 Johns Ch. 370) and, as its jurisdiction is **derived from the statute**, both as to the **conditions** under which it may be invoked, and the **extent** of the judgment which it may make in the exercise of this jurisdiction. (Ver plank vs. Mercantile Ins. Co. 1 Edw. Ch. 84.)

And this case further says on p. 148 “That section gives to the Superior Court of the county in which the corporation carries on its business authority to appoint one or more persons to be receivers or trustees of the corporation upon its dissolution **on application of any creditor of the corporation or of any stockholder or member thereof** and unless **such** application is made the Court has no **authority** to make the appointment. Its **jurisdiction** to make such appointment rests **upon an application** therefor by either a **creditor or stockholder**, and can **neither** be invoked at the **instance** of a stranger, nor assumed by the Court of its own motion.”

Here then is our case. No one but the **stockholder** can **invoke** the jurisdiction. The jurisdiction of the State Court **exists only** by the authority of the

statute. Had the corporation **applied**, the Court could not entertain the complaint and could not act in the premises, and therefore it was **impossible** under the **law of Nevada** for the corporation to **apply**, and as we shall show the bankrupt law requires the **application** to be made **under the law** of the State of Nevada, and as that **cannot** be done, and **was not done**, it cannot be averred or proved and such **argument** in the petition by the creditors does not amount to anything, for that which a corporation **cannot** do it could not **empower** some one else to do.

In *Murray vs. American Security Co.* 70 Fed 341, This **very court**, speaking through Judge Hawley. says on page 346:

“Courts do not make the laws. They interpret them. If there is no **warrant** in the statute **for the doing of an act**, courts cannot supply the defect. There is nothing in the contention of counsel for plaintiff in error that will justify us in interpolating into the statute something that the legislature has omitted. (*People’s Savings Bank vs. Superior Court*, 103 Cal. 33-36). In whatever light this question may be viewed, we are brought directly face to face with the **unquestioned** rule of law that **in all special statutory proceedings** the measure of the **Court’s power** is the **statute itself.**”

This is this very court speaking, and it says the **unquestioned** rule is, “that in all special statutory proceedings the measure of the Court’s power is the statute itself.” This being so, by what species of legal legerdemain can the **statutory** act of a **single** stockholder—the **only authority** or **power** for the court—become the **act** and **deed** of the corporation?

But **this court** did not stop with the above quotation, but said further, p. 346:

“Whatever **steps** are provided by the statute **may** be taken by the Court, and no matter how irregular or **erroneous** its action may be in regard thereto, it is **conclusive** until reversed upon appeal, and **cannot be collaterly assailed.**”

This decision, if it settles anything, settles **two** propositions: First, That the proceedings in the State Court are **conclusive** and **cannot be collaterly** attacked; and, second, that as the state law is a purely **statutory** proceeding this court cannot **interpret** into the statute what the legislature has omitted, to wit: the **right** or **power** of the corporation to **apply** for a receiver. Therefore two things are true: First, the corporation could not **apply** for a receiver and the act of the stockholder could **not be** the act or deed of the corporation; and second, the action of the State Court is **conclusive** and being conclusive, all the averments of the creditors petition tending to show conspiracy and agreement to enable the stockholder to do only what he alone could do and which the corporation could not do, nor authorize to be done, and which the court would have no jurisdiction to do, is of no force and adds nothing to the petition.

In *Fourth Nat. Bank. vs. Francklyn* 120 U. S. 747;

“Where a statute creates a right and prescribes a remedy the remedy prescribed is **exclusive** and must be strictly pursued.”

To the same effect, *Pollard vs. Bailey*, 87 U. S. 520;

And again the rule is,

“Where a statute gives a cause of action and designates the persons who may sue x x x none but the parties so designated can sue.”

Barker vs. Hannibal R. R. Co., 91 Mo. 86;

Swift & Co. vs. Johnson, 138 Fed. 867;

Oates vs. U. P. R. R. Co., 104 Mo. 514;

W. U. Telegraph Co. vs McGill. 57 Fed. 699;

Sanders vs. Louisville Exi III Fed. 708;

Now by these authorities it is clear that under Sec. 94 of Nevada statute only a **stockholder** can sue. Such being the case, the corporation could not bring the proceeding had in the State Court. And Mr. Anderson says,

Anderson on Receivers, Sec. 18;

“Where the Courts exercise purely statutory jurisdiction its proceedings must be within the provisions of the statute. Any action of the Court beyond the provisions would be without jurisdiction. x x x It can make no order and render no judgment beyond the scope of the statute.”

Therefore, if the corporation **had applied** for the appointment of a receiver, the court would not have had jurisdiction and its proceedings would be **void**.

Mr. Black on Judgments, Sec. 171.

Says: “The first and fundamental requisite to the validity of a judgment is that it should have been rendered by a court **having jurisdiction**. Without jurisdiction the courts can do nothing, and a judgment given **without** jurisdiction is a **mere nullity**.”

VOID JUDGMENTS

Mr. Freeman says:

Secs. 117-120, Freeman on Judgments;

“A void judgment is, in legal effect, no judgment. From it no rights can be obtained. Being worthless in itself, all proceedings founded upon it are equally worthless. x x x All acts performed under it and all claims flowing out of it are void.”

Mr. Black says:

Black on Judgments., Sec. 170;

“Now a void judgment is in reality no judgment at all. It is a mere nullity. x x x It can neither affect, impair nor create rights.”

To the same effect are,

In re Christiansen 70 Am. St. 794;

Savage vs. Sternberg, 67 Am. St. 751;

Staffords vs. Gallops, 68 Am. St. 815.

Therefore, if it be true that the **complaint** of the private stockholder in his **individual** capacity was in **truth** and **fact** the **act** and **deed** of the **corporation**, then the proceedings in the State Court was without **jurisdiction** and necessarily **void**, and being **void** “all acts performed under it and all claims flowing out of it are **void** and consequently when the **creditors** undertake to **predicate** an **act** of **bankruptcy**, upon the **act** of private stockholder in his individual right, when if the corporation had made such **application for a receiver** its act would be **void** for want of **jurisdiction** in the court, it pleads itself out of court because such act of the corporation would be an attempt to **base a right** upon a **void act** and such act would be a **nullity**, and certainly when Congress used the words “applied for a receiver” as we shall hereafter show, it meant a **legal** and not an **illegal** application, for Congress goes further and says “under the law of a State, of a Territory or of the United States,” meaning of course an **application** which the laws of Nevada could and would entertain, and upon which the court could legally appoint a receiver. This seems too plain for argument.

But again, the law is **universal**, that **without statutory authority** a corporation **cannot** apply for the **appointment** of a receiver over its **own** property, wether solvent or insolvent.

State vs. Ross, 122 Mo. 435;

Jones vs. Bank of Leadville, 10 Colo 464;

In re Brant, 96 Fed. 267;

Federal Cases, No. 6840;

Vila vs. G. Is. E. L. Co., 68 Neb. 222;

Kimball vs. Goodham, 32 Mich. 10;

Hugh vs. McRae (Chase) 466;

Whitney vs. Hanover Nat. B., 23 L. R. A. 531;

Pomeroy's Eq. Rec. Vol. 1, Secs. 118-119;

These cases are so conclusive and convincing they need no attempt at construction. There could be **no action** where the plaintiff and defendant are the same. The corporation cannot sue itself. There must be **adverse** parties. For the rule is,

“Same person cannot be both plaintiff and defendant at the same time in the same action, even in different capacities.

Vol. XV. Encyc. P. and Pr. 481;

Byrne vs. Byrne, 94 Cal. 576;

Blaisdel vs. Ladd, 14 N. H. 129;

Brown vs. Mann, 71 Cal. 192.

And certainly what the corporation cannot itself do it cannot authorize some one else to do. Besides a corporation must **sue** and be sued in its corporate name.

Sec. 3115, Thompson on Cor. (2nd Ed.);

Curtis vs. Murray, 26 Cal. 633;

Sec. 3119, Thompson on Cor. (2nd Ed.);

Sec. 3151, Thompson on Cor. (2nd Ed.).

And the statute of Nevada,

Sec. 3099, Compiled Laws,

Reads, Sec. 4: “Every action shall be prosecuted in the name of the real party in interest except as otherwise provided in this Act.”

And the exception is an assignee of a thing in action, guardian, executor or administrator or the trustee of an express trust.

And this rule applies to corporations.

Sec. 3121, Thompson on Cor. (2nd Ed.).

And an officer, director or trustee of a corporation cannot maintain an action in his own name on **be-half** of or in **favor** of his corporation.

Sec. 3181, Thompson on Cor. (2nd Ed.).

Nichols vs. Williams 22 N. J. E. 63;

Binney vs. Plundey, 5 Vt. 500.

Now applying the law as hereinbefore set forth, it must be apparent that the only averment of fact which can be looked to, upon the face of the Creditors Petition in Bankruptcy, is the **proceedings** in the State Court, and that all the other averments add nothing to the effect of the petition and are wholly incompetent, irrelevant and immaterial—and that as the proceedings in the State Court are **conclusive** and cannot be contradicted by evidence dehors the record, and the proceeding in the State Court is **purely statutory**, and only applies to a **stockholder** and the corporation cannot under any circumstances apply for a receiver, that if it did, such proceeding would be beyond the jurisdiction of the Court, is void, and that a corporation can only sue in its corporate name, and that any one who sues in behalf of the corporation must sue by using the corporate name, and that a corporation cannot sue itself, it is clear that the petition of the Creditors does not state facts constituting a cause of action in bankruptcy, unless the proceedings in the State Court, per se, was an **act of bankruptcy**, under the bankrupt act.

II

The Bankrupt Act, by Sec. 3, Sup. div. 4 of 1898, as amended in 1903, reads:

"4. Made a general assignment for the benefit of

creditors, or being insolvent applied for a receiver or trustee for his property or because of insolvency a receiver or trustee has been put in charge of his property under the laws of a state, of a territory or of the United States.”

It will be seen that the only charge in the petition is that the corporation “being insolvent applied for a receiver;” that is, it is only claimed that the act of bankruptcy was an act of the corporation in applying for a receiver, under the laws of Nevada, being insolvent.”

For this reason, the Court submitted the question of the corporation itself applying for a receiver, to the jury,

(Verdict 3, Trans. p. 27.)

Therefore only two questions to wit: First, was the corporation insolvent; and second, Did it apply for receiver, was tried and heard.

(Trans. pp. 26-27).

It being conceded that the filing of the complaint by the stockholder, the same not being based on **insolvency**, was not an **act** of bankruptcy under the provision, “because of insolvency a receiver was appointed,” and that the same was not a “general assignment for the benefit of creditors,” because under the following authorities it could not be claimed that the proceedings in the State Court was a “general assignment for the benefit of creditors” or an **act** of bankruptcy “because of insolvency” upon the appointment of receiver upon application of a stockholder.

In re Empire Mch Berstead Co., 95 Fed. 957;

In re Empire Mch. Bedstead Co., 98 Fed 981;

In re H. Zeltner Brewing Co., 117 Fed. 799;

In re Gilbert, 112 Fed. 951;

In re Hines, 144 Fed. 142;

Davis vs. Stevens, 104 Fed. 235;

Vacaro vs. Sec. Bank, 103 Fed. 436;

Duncan vs. Landis, 106 Fed. 839;

In re Penn Aldrich Co., 165 Fed. 249;

And therefore, the whole petition rests upon that clause or phrase of Sec. 3. Subs. div. 4, of the National Bankrupt Act, to wit: "Being insolvent applied for a receiver or trustee for his property x x x under the laws of a State, of a Territory or of the United States," and therefore the act of bankruptcy charged is "In that it did heretofore, to wit; on or about the 6th day of August, A. D. 1908, being insolvent apply for a receiver for its property." (Trans. p. 5).

There is no allegation anywhere of a stockholders' meeting, or a meeting of the Board of Directors, or of any resolution of any kind by the corporation, and no allegation of corporate authority granted or given to any agent or person and no allegation of any law authorizing or empowering the corporation to act in the premises, or of any corporate power under its charter or by statute, or that the proceeding was in pursuance of any law of the State of Nevada—there is simply the allegation, heretofore quoted (Trans. p. 5) and then the setting out the legal proceedings taken by Stone, as a stockholder, in his own right, and the record of the action of the Court, and then an allegation or conclusion of law, that the same was the act and deed of the corporation, because of an agreement and conspiracy. That such thing should be done "to take such measures and do such acts as would hinder, delay and defraud the creditors of said corporation"—but how a lawful act, can be a conspiracy—how an act which the corporation cannot do, and which clearly appears by the pleaded records of the State Court it

did not do could be a conspiracy, we are not told. Nor how an act which the law warrants, and which could only protect creditors and prevent a **preference**, could hinder, delay and defraud we are not told. It will be seen that the whole "Petition of the Creditors" is framed by inuendo and legal conclusions to try to **evade** the plain provision of the bankrupt law, that where the bankrupt law requires in plain language the "corporation itself" to apply for a receiver, and that such application is to be founded upon it **insolvency**, as the **reason** for the appointment of a receiver, and to try and make the act of a single stocker, in his individual capacity, the act of the corporation, but overlooking the fact that there is no law in Nevada authorizing a corporation to **apply** for a receiver **under any circumstances**. To do this it becomes necessary to violate that **cardinal** and **elementary** principle of pleading, that if a court hears a cause, that the **proof** must correspond with the **allegations** of the complaint. The allegations of the complaint in the State Court are "That said corporation has liabilities in the sum of Sixty-five Thousand (\$65,000) Dollars, and has assets exceeding the sum of Ninety-five Thousand Dollars (\$95,000). That owing to the depressed condition of business, etc., the said corporation is in danger of its assets being wasted through attachment or litigation."

Trans. p. 8;

Now Sub-division 15 of Sec. 1, of the National Bankrupt Act of 1898 says: "A person shall be deemed insolvent within the provisions of this act whenever the aggregate of his property x x x at a fair valuation be insufficient in amount to pay his debts."

And Sec. 94, Corporation law of Nevada supra

gives as **one** of the grounds for the stockholder to sue the corporation for the appointment of a receiver "or its assets are in danger of waste through attachment, litigation or otherwise."

Therefore, the complaint in the State Court was not founded at all upon insolvency. There could not be any testimony upon that subject, and the appointment of the receiver was not made upon that ground, and it is a rule of law well established, as is said in

Marshall vs. Golden Fleece G. S. M. Co., 16 Nev. 156;

"A judgment must accord with and be sustained by the pleadings of the party in whose favor it is rendered, and no court, jury or referee has any authority to find a fact or draw therefrom a legal conclusion which is outside of the issues."

Therefore the proceeding in the State Court **was not an insolvency** proceeding—there was no issue of insolvency, and the order appointing the receiver was not made upon any such thought, issue or purpose; and certainly Congress did not intend that the appointment of a receiver over a **solvent corporation**, or made in a proceeding not based upon insolvency should be an act of bankruptcy: for the purpose of the bankrupt law is to deal with insolvents.

If such is the case, that the bare appointment of a receiver matters not how is an act of bankruptcy, if it could be shown that the defendant was in fact insolvent, although no proceedings in court are based on insolvency, then **all the** decisions cited in this brief upon bankruptcy, from the Federal Reporter should be reversed, because they only look to the face of the proceedings in the State Court, and hold under such circumstances that **insolvency** is immaterial, for as is said in

Iner Perry Aldrich Co., 165 Fed. 249:

“Whether the corporation was actually insolvent or not, when the bill was filed or the receivers appointed under it seems to me **wholly immaterial**, unless it can also be made to appear that the **court so found**, either upon the evidence before it or the agreement of the parties, **and made the fact at least one of the grounds of its action.**”

The reason is that the record of the State Court cannot be disputed; it is conclusive.

Now take the case of

In re Golden Malt Cream Co., 164 Fed. 326;

There a bill was filed against the corporation by the president and the secretary of the corporation, both of whom were stockholders, for the appointment of a receiver, and alleged the corporation was **insolvent**. The corporation appeared and **admitted** that it was in debt, that a large portion of its debts were past due, that it had no available means at hand to meet the same, but evidently from the **order** of the court upon the hearing, it **denied** **insolvency** but admitted it by not denying in its answer. Now upon this state of the record after the appointment of the Receiver, a petition in bankruptcy was filed, against the corporation, under Sec. 3, Sub-div 4 of the Bankrupt Law, the same as here, charging the proceeding in the State Court to be an act of bankruptcy. After that, that is after the commencement of bankrupt proceedings, the corporation got a new trial in the State Court, and the plaintiffs amended their complaint alleging the corporation “was in danger of becoming insolvent,” and the corporation **denied** it was insolvent, but consented to the appointment of a receiver. The District Court held that this **was not** an act of bankruptcy, and the Circuit Court of Appeals for the 7th Cir-

cuit, affirmed the decision, and why, because the records of the State Court could not be disputed.

Again in *Zugalla vs. I. M. A.*, 142 Fed. 927, on page 935 the Circuit Court of Appeals for the Third Circuit says: "The law requires that the appointment of a receiver **in order to constitute an act of bankruptcy**, must be made by reason of the existence of a **certain fact**, to wit; the insolvency of the corporation. The existence of such fact must **necessarily be determined**, either by the admission of the party or by evidence adduced at a judicial inquiry duly had."

Again, insolvency so far as this cause is concerned is immaterial and was not and could not be an issue to be tried in the court below, as the only question is, "Did the corporation commit an act of bankruptcy?" The insolvency of the corporation, under the words "being insolvent, applied for a receiver" has reference to the proceedings in the State Court, being dated and founded on insolvency; that is, was the petition asking for the appointment of a receiver in the State Court asked for, on the ground of insolvency. "Being insolvent," does not mean that if a receiver is appointed upon some other ground, and it should turn out that as a fact the corporation was at that time insolvent, that then such appointment of a receiver would be an act of bankruptcy. Not at all. It means that the appointment of a receiver was made upon the application of the party corporation, upon the ground that it was insolvent and for that reason wanted and prayed for the receiver. These words "being insolvent," refer to the bankrupt asking for a receiver, as distinguished from some other party asking for a receiver and simply means that when the bankrupt asks for a receiver his petition when based

on insolvency is an act of bankruptcy. To file a bill or petition for the appointment of a receiver necessarily demands some grounds to be set out in the petition or bill, which will authorize the Court to act and adjudicate the necessity for the appointment of a receiver. That ground must be insolvency. Because the bankrupt act only supercedes State Insolvent laws. If the proceeding in the State Court is not an insolvent proceeding then such proceeding is not affected by bankruptcy in the Federal Court, and for the Federal Court to oust the State Court of jurisdiction, the proceeding in the State Court must be an insolvent proceeding, and therefore to make an act of bankruptcy in the appointment of a receiver in the State Court the jurisdiction of the State Court must be invoked upon the ground of insolvency, for if jurisdiction in the State Court is based upon some other ground then the action of the State Court is valid against bankruptcy proceedings in the Federal Court and the action of the Federal Court in subsequent bankruptcy proceeding could not reach or interfere with the State Court or its receiver. Congress never intended a conflict of jurisdiction between the State and the Federal Court. If the State Court appoints a receiver upon grounds independent of insolvency, its jurisdiction is complete, and the possession of the property in such receiver is beyond the process of the Federal Court; but if the State Court appoint a receiver upon the ground of insolvency, then such proceeding at once becomes an insolvent proceeding, and is suspended by the proceedings in the Federal Court, sitting in bankruptcy. Now the word "Act," as an "Act" of bankruptcy, means the thing done, and therefore what was done in the State Court is the act of bankruptcy, and to know

what was done, the record of that court is the best and only evidence.

Blue Mt. Iron & Steel Company vs. Partner
131 Fed 57;

When a legislature uses words which have received judicial interpretation they are presumed to be used in that sense.

U. S. vs. Trans. Mo. Frght Assn. 58 Fed. 58;
Sec. 398 Auth. Stst Const. 2nd Ed.

Perkins vs. Smith, 116 N. Y. 441;

We contend therefore that if the words "being insolvent applied for a receiver" has any reference to a corporation at all (and we think it has not), then we must construe such language as having been used by Congress, as to apply to corporations only, when the law of a State, a Territory or the United States permits and authorizes the corporation in its corporate capacity as a corporate entitle to **apply** for a receiver. If the law under which the corporation exists and has its being, does not empower the corporation to apply for a receiver and there is no law authorizing it so to do, certainly these words "being insolvent applied for a receiver" has no application to such corporation. Congress knew this. It could not legislate to the contrary. It therefore means by the words "being insolvent, applied for a receiver," that such application for a receiver must be based upon insolvency, so as to make the proceeding in the State Court come within the purview and meaning and jurisdiction of the national bankrupt law. Otherwise there would at once arise a conflict of jurisdiction between the two courts and as the State Court, being a separate and distinct forum, deriving its powers from a separate and independent sovereignty and having a prior and exclusive jurisdiction the Federal Court could do nothing and

the bankrupt law would be a nullity. But the proceeding in the State Court, being founded on insolvency, then the proceeding was an act of bankruptcy, and insolvency **alone**, is nowhere made grounds for an **involuntary** proceeding in bankruptcy. A corporation may be beyond question insolvent, but it cannot be declared a bankrupt for that reason. It must commit an act of bankruptcy—to do that it must apply for a receiver on the ground of insolvency. This is certainly plain. To avoid conflict of jurisdiction between the State and the Federal Court, Congress intended **insolvency**, to be the basis of the proceeding in the State Court, because we must presume Congress was legislating with full knowledge of judicial decision, and was familiar with

Peck vs. Jenness 7 How. 612;

Eyester vs. Faff, 91 U. S. 521;

Metcalf Bros. & Co. vs. Baker; 187 U. S. 165;

Shields vs. Coleman, 157 U. S. 168;

Porter vs. Sabin, 149 U. S. 373;

And many other cases which might be cited and also, that Congress had in view the general principle of law applicable to conflicting jurisdiction between State and Federal Courts, as laid down in such cases as,

State vs. Superior Ct, 28 Wash. 35;

Herron vs. Superior Ct. 136 Cal. 279;

And in Turrentine vs. Blackwood, 125 Ala. 436; where it is said,

“If a State National Court have concurrent jurisdiction over the property of a bankrupt, the Court which first takes cognizance of and acquires jurisdiction over the case has the right to retain it to the exclusion of the other.”

The same principle is laid down in

Gay, Hardie & Co., vs. B. C. I. Co., 33 Am. St. 122;

Taylor vs. Carryall, 20 How 583;

Barton vs. Barkow, 104 U. S. 126;

Peale vs. Phipps, 14 How. 373;

And the Supreme Court of the U. S. says,

“When a State Court and a Federal Court have concurrent jurisdiction of a cause, the first Court acquiring jurisdiction retains it to the exclusion of the other.”

Home L. Ins. Co. vs. Dunn, 19 Wall. 214;

In re Chatwood 165 U. S. 385;

Orton vs. Smith, 18 How. 263;

Smith vs. McIver, 9 What. 532.

And “The Court which first acquired possession of the **res** cannot be ousted of jurisdiction by a Court of concurrent jurisdiction.”

Ellis vs. Davis, 109 U. S. 485;

And such court cannot be deprived of the right to deal with such property until its jurisdiction is exhausted.

In re Johnson 167 U. S. 120;

And draws to itself the exclusive right to dispose of the property for the purposes of its jurisdiction.

Heidreller vs. Ellis Oil Co., 112 U. S. 294;

Robb vs. Connolly, 111 U. S. 624;

Moran vs. Sturges, 154 U. S. 256;

Many more authorities might be cited, but these are enough to show the elementary and universal principles of the law, as to conflict of jurisdiction of courts, of which Congress had in mind, and therefore, necessarily, Congress **intended** in using the words “being insolvent,” that the proceeding in the State Court, upon applying for a receiver, should be based upon insolvency, so that such proceeding before the State Court should be an insolvent pro-

ceeding, and thus be suspended by the National bankrupt act, otherwise the proceeding before the State Court could not be arrested by bankrupt proceedings in the Federal Court, and as the State Court having prior and exclusive jurisdiction bankruptcy proceedings in the Federal Court would be a useless act. Therefore we can only look to the proceedings in the State Court, and if they show upon the **face of the record** that such proceeding was not founded upon insolvency no act of bankruptcy could be committed in applying for the appointment of a receiver and insolvency is only **material** when upon the face of the record of the proceeding in the State Court it exhibits the fact whether the State Court acted upon insolvency, as a ground in the appointment of a receiver. If it did not, no act of bankruptcy was committed, and no **issue of insolvency** can be presented or **tried** in the Federal Court, for under such circumstances **insolvency** is wholly immaterial, if the State Court did not act upon insolvency.

This is fully sustained by

George M. West Co. vs. Lea Brothers, 174
U. S. 590;

And while that decision was rendered before the amendment to the National Bankrupt Act of 1903, inserting the words "being insolvent, applied for a receiver or trustee for his property, or because of insolvency a receiver or trustee has been put in charge of his property under the laws of a State, of a Territory or of the United States," the principle and the law there laid down was not in any manner changed by this amendment.

Besides Congress left sub. div. "c." and "d" of Sec. 3 of bankrupt act, stand just as it stood before making this amendment, showing as decided in

George M. West Co. vs. Lea Brothers & Co.,
174 U. S. 590;

That insolvency could not be made an issue at all, under Sub. div. 4 of Sec. 3, for had Congress **intended** to change the law as decided in *West vs. Lea supra*, then Congress would have at the same time it amended the law by amending sub. divs. "c" and "d," so that solvency could be set up by the alleged bankrupt as a defense under the amendment.

But Congress knew the law of the land as to conflicting jurisdiction of courts, and therefore intended that before the applying for a receiver could become an act of bankruptcy that such application for a receiver should be based on insolvency.

In fact, the amendment made by Congress upon the face thereof clearly shows that Congress **intended** the state proceeding to be an insolvency proceeding, for it says:

"Or being insolvent applied for a receiver or trustee for his property."

That is, because he is insolvent, he applies to the court on the ground of his insolvency for a receiver or trustee." Why does he ask for a trustee or receiver over his property? Upon what ground can he make such request? What fact can he base his right upon for a receiver? Manifestly insolvency and none other. Besides, Congress fixes the **sole** and **only** ground insolvency, and excludes all other grounds.

Therefore, unless the proceeding in the State Court is based on insolvency it is not an act of bankruptcy, and the question of solvency or insolvency is not an issue to be tried in the Federal Court, and we must look to the face of the proceedings in the State Court, and if that proceeding was not based upon insolvency no act of bankruptcy was com-

mitted, and in this case the petitioning creditors' petition utterly fails to state a valid cause of action.

In re Bubbank Co., 168 Fed. 719;

In re So. Steel Co., 169 Fed. 702;

(*Advance Sheets*, No. 4.)

aid down in

the following cases, to wit:

In re Rieger et al 157 Fed. 609;

Bank vs. Trekien, 59 Ch. St. 316;

State vs. Standard Oil, 15 L. R. A. 145;

People vs. N. R. S. R. Co. 121 N. Y. 582;

U. S. vs. Milwaukee, 142 Fed. 247;

Halkrook et al vs. Perkins, 147 Fed 166;

Canthra vs. Stewart, 109 N. Y. S. 770;

U. S. Mex. T. Co. vs. Delaware, 112 S. W. 447;

Southern E. S. Co. vs. State 44 So. R. 785;

7 Am. & Eng. Ency. Law, 633-634;

1 Cook or Cor. (5 ed.) p. 27;

Apply to this case. But it will be seen at a glance in reading these cases that the principle involved in them has no application to the point in issue here because those are cases where the "fiction of the corporation is used to an intent and purpose not within the reason and policy of the fiction" as is said on page 634, 7 Am. & Eng. Encyc. Law (2nd ed.) cited by the court, or to use the language of

Thompson on Cor. (2nd Ed.) Sec. 2, 359;

"The doctrine is well supported that a corporation cannot be formed for the purpose of accomplishing a fraud under the **guise** of a **fiction**; and when this is made to appear the fiction will be disregarded by the courts and the parties dealt with as though no such corporation had been formed," or also "Equity will set aside transfers made by a debtor, for the purpose of hindering and defrauding his creditors where he turns over all his assets to a corporation organized by himself." And Mr. Thompson cites

the Trebien case, and the Standard Oil case and many other cases to support his text. Why, because in these cases the **fiction** of the **corporation** was used for a corrupt end and purpose, either to make the corporate **entity** the instrument of perpetrating a fraud in receiving property of a debtor to defraud his creditors, or else the stockholders use the corporate entity to perform some act, contrary to the ends and purposes of the corporation, or against public policy, or where corporations have entered into partnerships, contrary to law, as the case of Standard Oil Co., **supra**, and 121 N. Y. 582 **supra**, as shown by Mr. Thompson on Corporations.

2nd Ed.) Sec. 2336, where he cites these cases or where a **trust** is illegally formed to **evade** the purposes of the corporation and perform acts contrary to public policy, as shown by

Thompson on Cor. Sec. 2140 (2nd Ed.);

Where he cites many authorities and particularly State vs. Standard Oil Co., **supra**; and

121 N. Y. 582, **supra**,

Because in all these **cases** the corporation was used either for a corrupt purpose or else some act was performed to avoid the corporate purpose and end, and the **corporate entity** was **used** to carry out that end. The question of the **right** of the corporation to **sue** or be **sued**, was not involved, and **no case** is **cited** or can be cite where the **corporate entity** can legally sue and be sued, in any other way than in its **corporate** name. Here the defendant does not attempt in any manner to involve the corporate entity. The action in the State Court was by a single stockholder, under a statute authorizing him to act and not permitting in any manner the **corporate entity** to act. There is no attempt on the part of the corporation to do anything. There is no attempt to

violate any law. There is no **fraud** against any one. The corporation law of Nevada permits a **stockholder** to thus act, and no one else. Every creditor is required to **know** that the law creating the corporation permits a stockholder to file such proceeding and that by so doing he is not **defrauded** but his rights protected and he contracts with the corporation with such knowledge.

Relpe vs. Rundle, 103 U. S. 222;

Parsons vs. Ch. Oak Etc. 31 Fed 305;

It will be seen that the defendant in the Court below is not pleading corporate entity., but that the creditors to evade the plain provisions of the state law and the Bankrupt law are seeking by evidence alunde of the State Courts proceeding by collateral attack, to make the act of a single stockholder, the act of the corporate entity. The question is not, as stated by the honored District Judge that the **corporate entity** will be disregarded in equity; but can the **petitioning creditors**, contrary to the very decisions cited by the learned court, use the corporate entity to defeat the act of a single stockholder, and make that act a corporate act? Not one of the authorities cited by the court touch this question. They all deal with **frauds** of the corporation or the **fraud** of a creditor, in creating a corporation. They are all actions, brought by the State, in **quo warranto** or by some person injured, to set aside and vacate a fraudulent act. They are all **direct** proceedings, and not **collateral**. They are all seeking to **avoid**, not **maintain**, corporate **entity**; while here the **creditors** are trying to make the **private** act, of a **private** person in his **private** capacity a **corporate act**. They not only seek to do that but to enable them to do so they **must impeach** the records of the State Court. They plead the rec

ord of the State Court, then seek to go behind those records, and collaterally assault those records. This they cannot do. They cite no authority where they can controvert the proceedings in the State Court and make those proceedings something else than what they were. Those proceedings speak for themselves. They cannot be thus impeached. They could be nothing else, under Sec. 94, Nevada Corporation law. If they were as sought to be established here, then the State Court would have **no jurisdiction** in the premises, because the State Court could not appoint a receiver at the **instance of the corporation**, and having **no jurisdiction** the whole proceeding would **be void**, and if **void** then there would certainly be **no act** of bankruptcy upon which to **predicate** the petition in bankruptcy. The argument pleads too much. For if the act is the **act of the corporation**, then the proceeding in the State Court would be **void**, for want of **jurisdiction** in the State Court and being void would be nothing and therefore not an act of bankruptcy, for a void act could not be the foundation of a **legal proceeding**. The bankruptcy act, in using the words "Being insolvent, applied for the appointment of a receiver x x x x under the laws of a state, etc.," means a **legal** proceeding which **can** be made under the laws of the state, and therefore a proceeding which cannot be made, and which the court cannot entertain, could not be a proceeding contemplated by the bankrupt law, and the contention of the Court in his elaborate opinion, has no foundation, either in fact or law; first, because the **fact is**, by the record of the State Court, that the corporation **did not** apply for a receiver, and that record **alone** can be looked to, and second, there is no pretense of any corporate act, by the corporate offi-

cers at any corporate meeting, and third, there is no pretense that Nevada has any law which authorizes the corporation to apply for a receiver, **and we defy any man to find any such law in Nevada**, because it does not exist.

True, by Sub-div. 8 of Sec. 7 of the Act of 1903, Statute of Nevada, 1903, under the powers of corporations, it says:

“8—To wind up and dissolve itself, or to be wound up and dissolved in the manner hereinafter mentioned.”

Then, by Sec. 89, of the same statute a method is provided how the corporation may dissolve itself, **entirely** outside any **court** proceeding, to wit; a meeting of the Board of Directors, the adoption by the Board of a resolution to dissolve, at a meeting called for that purpose after three days' notice to every director—then notice to stockholders published for **four** weeks successively in a newspaper, fixing the day and hour of the stockholders' meeting, and two-thirds consent of the stockholders at such meeting in writing—the filing of such consent with the Secretary of State, and the consent of certain creditors. Then the Secretary of State issues on the original articles of incorporation, a “certificate of dissolution.” This proceeding is not in court, and there is no receivership or anything. This is the power of the corporation **itself** and **the only power**. These proceedings were not taken and no such claim is set up, and therefore has no bearing in this case.

Sec 7 of said act designates the powers of the corporation and nowhere under those powers is it granted any powers to sue **itself** or **apply** to a court for the appointment of a receiver.

And Sec. 9 of said act, specially provides, “And no

corporation shall possess or exercise **any other corporate powers**, except such incidental powers as shall be necessary to the exercise of the powers so given,"

The learned Court says (Trans. p. 38): "The fact that certain powers are conferred by statute upon corporations does not mean that a corporation is unable to perform any act beyond the scope of such enumerated powers."

This is not in harmony with the rule of law as laid down by authority; because the Supreme Court of the United States holds, "A corporation cannot do anything except the powers granted. The enumeration of its powers excludes all others."

Thomas vs. West, R. R. Co. 101 U. S. 71;

Central Trans. Co. vs. P. C. Co., 139 U. S. 48;

Augusta Bank vs. Earl, 13 Pet. 587;

Then the learned Court further says (Trans. p. 38): "The statute restricts the authority of the corporation and fixes the limits beyond which its acts are unlawful, and in excess of the powers conferred." This is true, but the Court **misapplies** it, because to sustain the Court's position the act of the **single stockholder**, in filing his complaint in the State Court must be the **lawful** act of the corporation. If it was an **ultra vires** act, then it was **unlawful** and cannot be a **lawful** act, upon which to base the proceedings. The court fails to **distinguish** between a lawful act of a corporation, and a suit brought to **punish** a corporation for an unlawful act. When we claim that a corporation acts **lawfully** and that its act is the **deed** of the corporation within its powers, then the **burden** of proof falls upon the person so claiming, and it must be shown and proved that the corporation had the **power to act** and **acted** within those powers. On

the other hand when the State, through its penal laws, seeks to **punish** the corporation, or set aside its **ultra vires acts a question** arises not involved in this case. One seeks to **enforce** the acts of the corporation as valid, legal and proper; while the other is a **direct attack**, made **always against** the corporation to **vacate, set aside** and **nullify** the act. Here, in this case, it is sought in a **collateral** proceeding, not to set aside or vacate, the act of a corporation, but to make the act of a **single** stockholder in his individual capacity the **act of the corporation—to make a corporate act**—that is, **create a corporate act**—which corporate act when created shall be a **legal and proper** act. It then must be seen that the authorities cited by the Court do not deal with the issue in this case.

The rule contended for by the Court would reverse the decision of

In re Quartz Gold Mining Co. 157-243;
Which was distinctly upheld and sustained even to the adoption of the opinion of the lower Court, by **this Honorable Court** in

Van Emon et al vs. Veal. 158 Fed 1022;
And also is not in harmony with,

Germania S. V. Co. vs. Boynton 71 Fed 799;
Where it is held "that the **acquiescence** of **all the directors and stockholders** of a corporation **will not** validate a transaction outside the corporate powers."

Or as is held in

Curtin vs. Salmon R. Etc. Co., 80 Am. St. 132;
Ratification cannot give effect to an unauthorized Act, unless the person or body making the ratification could have in the **first instance authorized** the act."

Or as is held by the following authorities:

“Neither a majority of the Board, nor all of them acting separately can bind the corporation as to matters which they are only authorized to act upon as a board.”

Gashwiler vs. Willis, 33 Cal 11;

Kansas City Hay Press Co. vs. Deval, 72 Fed.
77;

Johnson vs. Sage, 44 Pac. 641;

Hillyer vs. Overman S. M. Co., 6 Nev. 51;

Sec. 1069, Thompson on Cor. (2nd Ed.);

Sec. 1071, Thompson on Cor. (2nd Ed.);

And by Sec. 23 of the Incorporation of Nevada, the **powers** of the corporation is vested in the Board of Directors, making the cases of

Gashwiler vs. Willis, 33 Cal. 11;

Kansas City Hay Press Co. vs. Deval 72, Fed
77;

Exactly applicable to this case, because under the California case and the Federal case, like our law, there is **no power** conferred on the **stockholders**, as that power is vested **exclusively** in the Board of Directors, and there is no pretense that there **ever was** **a meeting** or action of the Board of Directors in this matter.

The whole argument of the learned Court is based upon the proposition that there are cases when in equity the court will go behind the legal fiction of corporate entity, and remedy a corporate evil. But the Court cites **no** case where the shareholders in his **individual right** can **usurp** and **absorb** the corporate entity; for as is held in

Thomas vs. Matthiensen 170 Fed. 362;

Where it is said on page 363, “The shareholder and the corporation are different entities.”

So in State vs. Standard Oil Co., 49 Oh. St.
541;

Cited by the court, it will be seen that so far as the right of "suing ad being sued is concerned that court maintains corporate entity. The rule is **universal**, that a stockholders cannot sue **for** and **in behalf** of the corporation, except under the circumstances set forth in,

Howes vs. City of Oakland, 14 Otto, 450;

And there is no averment in the petition of fact, or attempt to show any fact or circumstance warranting a stockholder to sue **for** and **in behalf** of the corporation, and it is said in the notes to

97 Am. St. p. 30;

"It is an elementary proposition of law, needing the citation of no authority to support it, that a corporation is an entity distinct and apart from the members who compose it, and that generally speaking, **all duties** and **obligations** owing it can be **enforced only** by suits brought **in its name.**" All the grounds where the stockholders may sue for the corporation are particularly set out in

Hawes vs. Oakland, 104 U. S. 450;

We must keep in mind that to sustain this bankruptcy petition, it must be found that the **corporation applied** for a receiver and to do so the stockholder had to **sue for and in behalf** of the corporation.

But a stockholder can only sue, as a stockholder, when he sues to protect **his rights**, and these rights are dual to-wit; when he has a grievance **against** the corporation affecting him **individually** as such stockholder and then he **sues the corporation**, and when within the corporate body in connection with all other stockholders, he exercises his rights as such stockholder, within corporate action, and in this case he cannot sue, except in his own behalf and in behalf of all other stockholders—but the ac-

tion must be **for** and in **behalf** of the corporation, and to enable him to thus sue he must plead and prove the failure and inability of the corporation to act, his attempt to obtain corporate action and his failure in that behalf and other such matters or to use the language of Justice Miller in

Hawes vs. Oakland, 104 U. S. 450;

“He must make an earnest and not a simulative effort with the managing body of the corporation, to induce remedial action on their part, and **this must be made to appear to the Court.** x x x And the failure in these efforts should be stated with particularity.”

And Mr. Morawitz, on Cor. Sec. 239 (2nd ed.) says: “A shareholder cannot sue if the corporation is able to protect itself.”

Also Mr. Cook on Stock and Stockholders, Sec. 692 says: “The corporation itself is an indispensable party **defendant** to a stockholder’s action for the purpose of remedying a wrong which the corporation itself should have remedied.”

Now then the law of corporations knows no such thing as a stockholder being authorized by the corporation to bring a suit or proceeding for and in behalf of the corporation **as a stockholder.** If it can be brought as the agent, then it must be in the **name of the corporation,** and the averments of the complaint **must show** that it is a **corporate suit** for a **corporate purpose,** and it must show the **corporate power and authority** to prosecute the action and must be a **corporate cause of action.**

After careful and diligent search we cannot find **one** case where a court of law or of equity ever set aside the corporate entity to enable a private stockholder, in his **individual** right to prosecute an **action** which he **alone** could bring, and which the corpor-

ation **could not** bring, when the action had to be prosecuted against the corporation to make such **action** a corporate act. There are no such authorities. To hold is to set aside the Statute of Nevada, and change completely the law of corporations as to the relation and powers of stockholders **inter se**, and outside corporate functions.

The Court further comments upon and sets out certain testimony of certain facts, occurring in 1906 and 1907, long prior to the proceedings in the State Court and then claims that these things were done "to hinder, delay and defraud creditors" But there is no such ground as "hinder, delay and defraud creditors" as an act of bankruptcy and these things are not evidence of any kind, except under the 1st Act of Bankruptcy.

Sec. 3, Bankrupt Act.;

When a party "conveyed, transferred, concealed or removed or (permitted to be concealed or removed) any part of his property with intent to hinder, delay or defraud his creditors or any of them," and this is a separate act of bankruptcy not alleged or pretended to exist in this action, and even under that clause on averment in the language of the statute is not sufficient.

In re White 135 N. Y. 199;

In re Hark Bros. 135 N. Y. 603;

But here in our case the act of bankruptcy "is applying for a receiver being insolvent." The corporation either did so or it did not. It does not matter how the business of the corporation was conducted or how books were kept and how much money it took in or how it paid out the same or to whom it paid it, nor does it matter in the least that it **consented** to the appointment of a receiver. These matters are wholly immaterial, for the rule is:

“Obtaining the appointment of a receiver by an insolvent partnership through dissolution proceedings in a State Court, though such action was taken for the purpose of preventing the bankruptcy court from obtaining possession of the assets, is **not an** act of bankruptcy under Bank Act, 1898, Sec. 3a. cl. 1). There the act of bankruptcy was alleged under Sub-div. 1 of Sec. 3, where the words “hinder, delay or defraud creditors are used. The rule being that the pleader must stand or fall upon the **ground** or **act** of bankruptcy alleged, and that case also says:

“My attention has not been called to any authority decisive of the point involved but the tendency of the court is apparently adverse to extending the bankruptcy jurisdiction to cases not clearly within the provisions of the law,” (citing 95 Fed. 957; 98 Fed. 981; 99 Fed. 76; 103 Fed. 436, and 97 Fed. 489).

And “**consent**” to the appointment of receiver does not affect the question because the “act” must be “voluntary” not permissive.

Vacaro vs. Security Bank, 103 Fed. 436;
And further the clause “with intent to defeat or delay the operation of this act” as used in Sec. 39 of the old act of 1867, is not in the present act,

Vacaro vs. Security Bank, 103 Fed at p. 440;

Baker-Ricketson Co., 97 Fed. 489;

And therefore, it matters not what salary was paid Mr. Stone, or that they refused to permit the books of the corporation to be examined, particularly as they had no control over the books after the corporation passed into the hands of the State Receiver, and there is no pretense of any demand to examine the books until the State Court took possession. All

these matters are beside the question which is. "Did the corporation apply for a receiver?"

So in *Davis vs. Stevens*, 104 Fed. 235;

It is said, "The **consent** of a partnership, **although insolvent**, to the appointment of a receiver for its property by a State Court, and the **surrender** of its property to such receiver, **do not constitute** an act of bankruptcy, under Bankr. Act of 1898, where it is not shown that any creditor obtained preference over another."

We need not cite further authorities on these lines because it must be apparent that the whole question of an **act** of bankruptcy is what was done in the State Court, and that in that Court there must be some allegation of **insolvency**, some finding of **fact** to that end and purpose, because in **Involuntary** bankruptcy cannot be predicated **alone** on insolvency and as a **corporation** by Sec. 4 of the Bankrupt Act cannot make a **voluntary** application, therefore it does not matter how **insolvent** a corporation may be it cannot be put into bankruptcy at all, unless it commits an **act** of bankruptcy. The **first** question there is, **did it commit an act of bankruptcy?** If it did not, it cannot be declared bankrupt? To know whether it committed an **act** of bankruptcy, the proceedings in the State Court speak for themselves. They cannot be **contradicted**. They are **conclusive**. If, therefore, the complaint in the State Court was not **founded** and **based** upon **insolvency** there was **no act** of bankruptcy

IV.

But the learned trial Judge seems to hold that the Statute of Nevada was an Insolvent Statute, but it will be seen that the authorities cited by him will not sustain any such conclusion, because

In re Salmon, 143 Fed. 395;

Was under a purely insolvent law, and no proceedings under the law of Missouri, under consideration in that case could take place, except upon a finding of **insolvency**. The Secretary of State could not move at all unless the **bank** was **insolvent** and the court had no jurisdiction except the proceeding was purely insolvent and the only **point** as to that law **not being** an insolvent law was made in the case, was that because there was no **discharge** of the debtor it was not an insolvent law and the Court simply held that fact **alone** did not prevent the law from being an insolvent law. And rightly, because the whole law was **insolvency** and nothing else.

Hansbrough vs. Costello, 184 Ill, 110;

Cited by the Court is not in point, because the assignment law of Illinois was a regular insolvent law and enacted for that purpose and the Court says in that case: "The assignment act of Illinois has been held to be a **general** insolvent law and was so intended by the legislature."

The other cases cited by the learned Court are not within our reach, and we therefore cannot comment upon them, but our act of Incorporation law has no **intent** of any kind of being an insolvent law, and besides the one necessary ingredient of every insolvent and bankrupt law, to wit: an assignment and transfer of his property, for as

Mr. Jones on Ins. & Failing Cor. Sec. 21;

Says, speaking of Insolvent and Bankrupt laws: "In ?????????? there must be an assignment for the benefit of creditors, "that is, to be an insolvent law it must be passed by the legislature for the express purpose of **protecting** creditors, and for the benefit of the debtor and there must be some abso-

lute assignment of the debtor's estate, and some provision for discharge.

And the following authorities show clearly that our state law is not an insolvent law:

Steelman vs. Mattix, 36 N. J. 344;

Sullivan vs. Hiskell (Crabbe, Pa.) 525;

Eh???? vs. Adams, 13 Bankr. R. 141;

Mayer vs. Hillman, 91 U. S. 496;

Cook vs. Rogers, 31 Mich. 391;

This decision—91 U. S. 496—is exactly in point.

V.

The foregoing parts of this brief cover all questions raised in our assignment of errors, except the "7th" and "8th," and we desire to say that in thus grouping 1st, 2nd, 3rd, 4th, 5th, 6th and 9th assignments under the discussion of the 1st assignment we do not waive the other assignments, but simply present the points raised in each by a full discussion under the 1st assignment.

Now the 7th and 8th assignments of error raises the question that the verdict of the jury is outside any **triable** issue, and that the Court could not pronounce or enter a judgment of adjudication upon them, and therefore **erred** in not granting our motion in arrest of judgment.

By Bankrupt Act, Sec. 3;

It will be seen that (sub-div. "c.") allows defense of **solvency** to be made **only** to the first sub-division of Sec. 3; that is, when the defendant is charged with (1) "conveyed, transferred, concealed, etc.," (And sub-div. "d.") only allows **solvency** to be set up when the act of bankruptcy charged is under sub-div. "2" or "3," but that the **right** to plead **solvency** as a **defense**, cannot be set up to either sub-

division "4" or "5." The reason is that under subdivision 1, 2, or 3, if the party is solvent he has in the law the right to do these acts, and there must also be an **intent** under the 1st to hinder, etc., under the 2nd to prefer, etc., and under the 3d an **intent to prefer**. But in the 4th and 5th the doing the act **itself**, whether solvent or insolvent is an **act of bankruptcy** and therefore the **fact** that the petition in bankruptcy **charges insolvency** and the answer **denies** it, does not make a **triable issue**.

This very contention of ours is squarely decided in

George M. Wert Co. vs. Lea Bros. & Co., 174
U. S. 590;

And under that decision the 1st and 2nd verdicts of the jury are nothing at all, because **insolvency was not and could not** be an issue. To the same effect:

Day vs. Back etc., 114 Fed. 834;

Acme Ford Co. vs. Meier, 153 Fed. 74;

In re Sully, 142 Fed. 895;

In re Duplex Bal. Co., 142 Fed. 906;

There being therefore no **issue of insolvency**, the only question which could be tried (and that was **purely of law for the court**) **was the proceeding in the State Court, an Act of Bankruptcy?** And this could **only be tried** upon the **face of the record in the State Court**, and "the rule is well settled and it would seem has never been doubted or questioned, that in civil actions tried before a court with a jury it is the province of the Court to determine questions of law."

XXIII Am. & Eng. Cyc. Law 545 (2nd Ed);

Easton vs. Bank of Stockton, 66 Cal. 123;

Grant vs. Moore, 29 Cal, 652;

Fulton vs. Onesti, 66 Cal. 575;

Wilson vs. Van Leer, 127 Pa. St. 371;
And all questions which arise upon the pleadings
are questions of law for the Court.

XXIII Am. & Eng. Cycl. Law 552 (2nd Ed.);
The constructions of **judicial records** is for the
Court.

XXIII Am. & Eng. Cycl Law 555 (2nd Ed.).
Therefore the third issue presented to the jury is
one of law. There was no **fact** to be determined by
either the Court or jury. The proceedings in the
State Court were pleaded by the Creditors and ad-
mitted by the defendant. The only question was
one of law, based solely on the **face** of that record.
All the other evidence before the jury was wholly
incompetent, irrelevant and immaterial and outside
any issue to be tried. The Court, therefore, **erred**
in denying the motion for arrest of judgment, and
the **verdict** of the **jury** could not be the foundation
for an **adjudication** at all.

We therefore, respectfully request that this Writ
be sustained, the petition of the creditors be denied
and a mandate issue that the cause be dismissed.

Thompson, Morehouse & Thompson

Att'ys and Solicitors for Plaintiff in Error.



IN THE
United States Circuit Court of Appeals
NINTH CIRCUIT

EXPLORATION MERCANTILE
COMPANY, a Corporation,
Plaintiff in Error,

VS.

PACIFIC HARDWARE AND
STEEL COMPANY, a Corporation,
THE GIANT POWDER COM-
PANY, CONSOLIDATED, a Cor-
poration, and J. A. FOLGER AND
COMPANY, a Corporation, Peti-
tioning Creditors,
Defendants in Error.

Brief of Defendants in Error

J. L. KENNEDY,
Attorney for Defendants in Error.

Filed this.....day of..... 1909.

F. D. MONCKTON, Clerk.

By.....Deputy Clerk.

FILED

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No. 1745.

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tioning Creditors,
Defendants in Error.

BRIEF OF DEFENDANTS IN ERROR.

STATEMENT OF THE CASE.

The statement of facts set forth in the brief of plaintiffs in error is controverted. Briefly the facts are:

That on the 6th day of August, 1908, the Exploration Mercantile Company, a corporation, plaintiff in error herein, applied to the District Court of the First Judicial District of the State of Nevada, in and for the County of Esmeralda, for a receiver for its property.

That at the time of said application said Exploration Mercantile Company was insolvent, and that its property, at a fair valuation, was insufficient to pay its debts.

That thereafter, and on the 12th day of September, 1908, while said Exploration Mercantile Company was still insolvent, and its property at a fair valuation was insufficient to pay its debts, the petitioning creditors, defendants in error, herein, filed their petition in the District Court of the United States for the District of Nevada, praying that said Exploration Mercantile Company be adjudicated a bankrupt within the purview of the acts of Congress relating to bankruptcy.

That to this original petition was filed a demurrer on behalf of said Exploration Mercantile Company, and a purported plea by Walter C. Stone, as an individual. That the said demurrer and plea came on duly for hearing, and was argued and submitted to said United States District Court, whereupon the said demurrer was sustained, with leave to the said petitioning creditors to file an amended petition.

That pursuant to such leave the creditors thereafter duly filed their amended petition, as set forth, beginning on page 1 of the transcript herein.

That no plea or demurrer was ever interposed to said amended petition and issue was joined, as to certain of the facts, in the answer set forth, beginning on page 15 of said transcript.

That thereafter the said matter came on regularly for trial on said amended petition and answer, the facts

were found as summarized above, and the said Exploration Mercantile Company was duly adjudicated a bankrupt.

Verdict, Transcript, pp. 26, 27;
Adjudication, Transcript, pp. 54, 55.

Plaintiff in error does not question any ruling as to the admission or rejection of evidence or any instruction of the court to the jury given or refused. The facts are therefore admitted.

“The verdict of a jury settles all questions of fact”.

Lehnen vs. Dickson, 148 U. S. 71;
Bond vs. Dustin, 112 U. S. 609.

“The distinction between a writ of error which brings up matter of law only, and an appeal, which, unless expressly restricted, brings up both law and fact, has always been observed by this court, and been recognized by the legislation of Congress from the foundation of the government. Dower vs. Richards, 151 U. S. 658, 663, 38 L. Ed. 305, 307, 14 Sup. Ct. Rep. 452; Wiscart v. Dauchy, 3 Dall. 321, 1 L. Ed. 619.

“So far from any restriction being imposed by Section 25a, the language used is ‘appeals, as in ‘equity cases,’ and on appeals in equity cases the whole case is open.

“But Congress did not thereby attempt to empower the appellate court to re-examine the facts determined by a jury under Section 19 otherwise than according to the rules of the common law. The provision applies to judgments ‘adjudging or

‘refusing to adjudge the defendant a bankrupt,’ when trial by jury is not demanded, and the court of bankruptcy proceeds on its own findings of fact. In such case, the facts and the law are re-examinable on appeal, while the verdict of a jury on which judgment is entered concludes the issues of fact and the judgment is reviewable only for error of law.

“And it follows that alleged errors ‘in instructions given or refused or in the admission or rejection of evidence,’ must appear by exceptions duly taken and preserved by bill of exceptions.”

Elliott vs. Toeppner, 187 U. S. 334, 47 Law Ed. 200, 203.

No exceptions have been taken or preserved by bill of exceptions and the cause comes on here squarely on the sufficiency of the pleadings.

I

All of the assignments of error and the arguments of plaintiff in error reduce themselves to the one proposition that on the face of the creditors’ amended petition the District Court of the United States, as such, had no jurisdiction, but that the District Court of the First Judicial District of the State of Nevada had exclusive jurisdiction.

This being the case it is well settled that no writ of error or appeal lies to the United States Circuit Court of Appeals, but the question must be taken directly to the Supreme Court of the United States.

This Court, therefore, has no jurisdiction of the case

and the writ of error and all proceedings herein should be dismissed.

“That appeals or writs of error may be taken from the district courts or from the existing circuit courts direct to the supreme court in the following cases: In any case in which the jurisdiction of the court is in issue in such cases the question of jurisdiction alone shall be certified to the supreme court from the court below for decision. * * *

“Sec. 6. That the circuit court of appeals established by this act shall exercise appellate jurisdiction to review by appeal or by writ of error final decision in the district court and the existing circuit courts in all cases other than those provided for in the preceding section of this act, unless otherwise provided by law.

“In *McLish vs. Roff*, 141 U. S. 661, 668, 12 Sup. Ct. 118, 120, the supreme court held that, after a final judgment in the circuit court, ‘the party against whom it is rendered must elect whether he will take his writ of error or appeal to the supreme court upon the question of jurisdiction alone, or to the circuit court upon the whole of the case. If the latter, then the circuit court of appeals may, if it deem proper, certify the question of jurisdiction to this court.’

“In the case of *The Alliance*, 44 U. S. App. 52, 17 C. C. A. 124, and 70 Fed. 273, this court held that, to give the circuit court of appeals jurisdiction to review an appeal from the district court in admiralty under the act of March 3, 1891, it was necessary to present for review some question other than that of jurisdiction, and, as the case did

not present such a question, the appeal was dismissed.

“In *Manufacturing Co. vs. Barber*, 18 U. S. App. 476, 9 C. C. A. 79, and 60 Fed. 465, the circuit court of appeals for the seventh judicial circuit held the same doctrine upon a writ of error from the circuit court, and in that case the writ of error was dismissed. In the present case the substantial and only question is as to the power of the district court to render a personal judgment or decree against the company having the custody, control, and management of the steamer at the time of the accident. This is clearly a question of jurisdiction, which this court is not authorized to review. The appeal is therefore dismissed, at appellants’ costs.” Morrow, Circuit Judge.

The *Annie Faxon*, (C. C. A. 9th C.), 87 Fedr. Rep. 961.

II

Plaintiff in error is mistaken in its statement of facts in the following particulars:

1. In the assertion that Walter C. Stone, as an individual stockholder, filed in the District Court of the First Judicial District of the State of Nevada, in and for the County of Esmeralda, his complaint, in writing, as set forth on pages 7 to 10 of the transcript, herein, that C. E. Wylie asked, as director, to be appointed receiver and that the proceedings enumerated in pages one to three of the said brief are all the proceedings in the State Court.

The creditors’ amended petition distinctly alleges,

and the jury has so found, that in pursuance of a conspiracy and agreement all of the directors and officers, acting for and on behalf, and as the act and deed of said corporation, which was then and there insolvent, caused to be filed in the said State Court, the pleadings set forth on pages 7 to 11 inclusive of the transcript herein, and further that on the said 6th day of August, A. D. 1908, said directors and officers of said Exploration Mercantile Company, a corporation, acting for and on behalf, and as the act and deed of said corporation which was then and there insolvent as aforesaid, moved the said State Court upon the said pleadings as above set forth, for an order, and said State Court, on said day made its order, appointing said C. E. Wylie receiver of the property of said Exploration Mercantile Company, a corporation, with full power to take charge of the assets, control and business of said company.

The creditors' amended petition sets forth the ultimate fact that the Exploration Mercantile Company applied for a receiver.

“For the purpose of pleading, the ultimate fact to be proven need only be stated. The circumstances which tend to prove the ultimate fact, can be used for the purposes of evidence, but they have no place in the pleadings.”

McAllister vs. Kuhn, 96 U. S. 87;
31 Cyc. 49.

The plaintiff in error, having answered without objection, by demurrer or plea, to the form of the plead-

ings, and joined issue as to the facts in said creditors' amended petition, it cannot now, for the first time, object to the pleading for informality, but only if there is an absolute failure to state facts constituting a cause of action.

Nebeker vs. Harvey, (Utah), 60 Pac. 1029,
1031;
Geo. H. Fuller Desk Co. vs. McDade, 113
Cal. 360.

"At common law, indefiniteness and uncertainty, being defects of form in a pleading, are subject to a special but not a general demurrer."

31 Cyc. 281.

It is not only unnecessary, but would have been improper, to have set forth probative matter, such as, that a meeting of the board of directors was held, that the board passed a resolution authorizing corporate action, or to have set forth the manner of authority by which the agents of the corporation acted.

It necessarily follows, therefore, that there is nothing further which this Court can review, and the writ of error and proceedings herein must be dismissed.

2. In the assertion that "At the same time" (of the filing of its answer) "W. C. Stone, plaintiff in the "action in the State Court, filed his separate plea to "the jurisdiction of the District Court under the "creditors' petition, which was not replied to or set "down for argument."

It appears by the endorsement, set forth on page 26 of the transcript herein, that this alleged plea was filed

September 17th, 1908, whereas, it appears by the endorsement set forth on page 15 of said transcript, that said creditors' amended petition was filed October 4, 1908.

The said purported plea of W. C. Stone was filed at the time of demurring to the creditors' original petition. It must be wholly disregarded, because:

1. Walter C. Stone is not a party nor entitled to a hearing on the issue of involuntary bankruptcy.

2. The service of the injunction upon him does not make him a party.

Carr vs. Whitaker, 5 Natl. Bank R. 175;
7612 Fed. Cas.

3. So far as it appears he has no provable claim.

Loveland on Bankruptcy, 3d ed. 262;
In re Columbia Real Estate Co., 112 Fed. R.
643, 647.

4. Under the 32nd equity rule a defendant can demur or plead to a whole plea or to part of it, and he may demur to part, plead to part, and answer to residue, but there is no warrant for a stranger to the record interposing a plea.

5. A valid plea would have been exhausted when the demurrer to the creditors' petition was sustained and became an absolute nullity unless on motion to have it stand as a plea to the amended petition or a new plea was interposed.

6. This plea does not fall within the assignments of error filed herein.

Rule 24, sub. 6, C. C. A.

III

Proceeding now to answer the various arguments of plaintiff in error. It is claimed that it is impossible under the Nevada statutes for the corporation to have applied for a receiver and therefore could not commit an act of bankruptcy.

This cannot be true for the reasons so well stated in the opinion of the learned Judge set forth on pages 35 to 46 inclusive of the transcript herein, which is hereby adopted and made a part of this brief.

And furthermore in a case where one partner only made an assignment it was held that as the assignment purported to transfer all the property of the partnership, it was a general assignment by the partnership, though, as it purported to transfer only their joint, and not their individual, property, it was but a partial assignment by the individual partners. Whether, having been made by one partner only, it was valid, void or voidable is immaterial. Apparently the partner who did not join had ratified, by acquiescence, the act of the partner who executed it. However this may be, in denominating the making of a general assignment for the benefit of creditors an act of bankruptcy, Congress did not make any distinction between valid or invalid instruments, but used terms which would reach the execution of any instrument which is, or

purports to be, a general assignment. The majority of the Court are of the opinion that the making of the assignment by Meyer, being an act of bankruptcy of which he was the author, entitled the creditors to an adjudication against him individually. Held also that the partnership be adjudicated a bankrupt. The analogy to a corporation is stated. (U. S. C. C. A.)

In re Henry L. Meyer, 3 Am. B. R. 560;

In re Grant, 106 Fed. 496.

“The intention of the amendment of 1903 being clear, there would appear little doubt that any act, procedure, or process for the winding up of insolvent corporations or copartnerships, which substantially abridges or deprives creditors of the right to a trustee of their own choosing, or of the greater right to compel prorating between all creditors of the same class, or any other right given them by the bankruptcy law, will, provided the alleged bankrupt is insolvent at the time of the commission of the act complained of and that act be within the four months period, amount to an act of bankruptcy. The importance of this change cannot be overestimated.”

Collier on Bankruptcy, 7th ed., p. 83.

It follows, therefore, that whether the application to the State Court was valid, void or voidable, is immaterial so long as the Exploration Mercantile Company made an application. That it did has been conclusively found. Also that it was then insolvent. It was therefore properly adjudged bankrupt.

IV

It is claimed that the proceedings in the State Court are conclusive and cannot be collaterally attacked. (Brief, p. 13.)

This contention has no application to this case for the reason that it is the very fact of the bankrupt presenting this and the other pleadings set forth in the said creditors' amended petition that constitutes the act of bankruptcy, the corporation being insolvent, and so long as the application is made by the corporation to the court for the appointment of a receiver the contents thereof are immaterial except as to the point that it is an application for a receiver. There is, therefore, no collateral attack on, or attempt to impeach or discredit the proceedings in the State Court.

The Federal Court, as a court of bankruptcy, has sole and exclusive jurisdiction over the proceedings.

The Congress shall have power—4. To establish an uniform rule of naturalization and uniform laws on the subject of bankruptcies throughout the United States.

Const. U. S., sec. 8, sub. 4.

Congress has made the bankruptcy courts the proper tribunals for such matters as the case at bar, and has given them exclusive jurisdiction.

R. S. 711, Ch. 80 U. S. Comp. Stats. 1901, p. 577.

Also found 1 Rose's Code Fed. Proc., p. 120.

Bankruptcy Act of 1898 as amended 1903, sec. 2, (1), (15).

While the national law was in force any proceedings commenced under the State law would have been null and void. The State law is suspended.

Sadler vs. Immel, 15 Nev. 265, 268.

The Federal Court will restrain the State Court proceeding which would defeat the act.

In re Hornstein, 122 Fed. R. 266, 271;

In re Knight, 125 Fed. R. 435;

Loveland on Bankruptcy, 3d ed., p. 111;

Remington on Bankruptcy, vol. 1, secs. 1602, 1605;

In re Brown, 91 Fed. R. 358.

To allow the bankrupt to select the trustee to administer upon his estate, instead of the creditors, as provided in the bankruptcy act, or to allow the State Court to take jurisdiction of the estate of the bankrupt, and administer and distribute it, would effectually destroy the efficiency of any bankrupt act that might be enacted by Congress, and thus effectually destroy the power granted to Congress to pass a bankrupt act.

In re John A. Ethridge Furniture Co., 92 Fed. Rep. 329, 332.

The rule that the bankruptcy court supersedes the custody of the State Court in cases of assignment, receiverships, etc., created within the four months' period, is said to have as its basis the necessary implication arising from such assignments and receiverships, being specifically declared to be acts of bankruptcy * * * the necessary implication arises, it is said, that the assignments and receiverships themselves become void.

1 Remington on Bankruptcy, sec. 1603, p. 967;
Id., sec. 1634, p. 1008.

The bankrupt law is paramount to all the State insolvent laws, and where the effect of enforcing the State law is to defeat the object and provisions of the bankrupt act, that part of the State law must yield to the provisions of the latter.

Cresson & Clearfield Coal & Coke Co. vs.
Stauffer, 148 Fed. R. 981.

The familiar rule announced in Peck vs. Jenness, 7 Howard, 612, 12 Law Ed. 841, that as between courts of concurrent jurisdiction the one which first obtains the *res* keeps jurisdiction has not application in the case at bar. That case was relied upon in the case of

In re Watts & Sachs, 190 U. S. 1;

See, also, Crochet vs. Red Rover, 155 Fed. 486.

V.

In a case having almost identical allegations the Supreme Court of Nevada has squarely held that all proceedings under the provisions of Section 94 of "An act providing a general corporation law." (Stats. 1903, p. 155, c. 88), based on a complaint which does not make all of the directors of the corporation parties in the complaint are absolutely void for want of jurisdiction. Two directors were not made parties in the complaint of Walter C. Stone in the said State Court, as appears from the record herein.

Golden vs. Averill, (Supr. Ct. Nev.), 101 Pac.
1021.

And plaintiff in error on pages 14 and 15 of its brief, has clearly shown the effect of void judgment. As it says: "It is a mere nullity." The proceeding in the State Court is therefore conclusive of nothing except that, as a matter of fact, the Exploration Mercantile Company applied to that court for the appointment of a receiver, and there is nothing to be collaterally attacked.

VI

The claim that the bankrupt corporation cannot apply for a receiver, or sue itself, has been fully answered in the preceding paragraph and in the opinion of the Court below. (Trans., pp. 35 to 46.)

VII

It is contended (p. 19 of the brief of plaintiff in error) that the application for a receiver must be made "under the laws of a State, of a Territory, or of the United States."

If this were true that part of the opinion of the learned Judge of the District Court last referred to shows that it has been complied with, and, furthermore, the clause, "under the laws of a State, of a Territory, or of the United States," modifies the phrase which it immediately follows, and which is carefully omitted and indicated by stars in the brief of plaintiff in error, and not the clause "Being insolvent applied for a receiver or trustee for his property."

In case there be difficulty in interpreting the qualifying words of a sentence, the rule is to apply them to

such other words or phrase as shall immediately precede them therein, rather than to those more remote.

Gaither vs. Green, 40 La. Ann. 362, 4 South. 210.

In the construction of statutes, a limiting clause is to be restrained to the last antecedent, unless the subject-matter requires a different construction.

Cushing vs. Worrick, 75 Mass. (9 Gray), 382.

The relative "which" and the adjective "said" were held to refer to the last antecedent, whether a word or clause, and not to include a clause preceding the last.

Fowler vs. Tuttle, 24 N. H. (4 Fost.) 9.

And this is the view taken by the courts, and it is immaterial whether the complaint in the State Court was founded upon insolvency.

Five months before the passage of the amendment to the Bankruptcy Act of February 5, 1903, a petition signed by three directors of the alleged bankrupt, praying for an order dissolving the corporation, was presented to the Supreme Court of New York and a temporary receiver was appointed, pending the outcome of an order to show cause before a referee. Upon the report of the referee being returned, the attorneys for the petitioners moved for an order confirming the referee's report and appointing Milbury permanent receiver.

It was contended that the application was a continuing proceeding and was made prior to the amendment of 1903.

Held: Application was made April 23, 1903, by the three directors of the company "for an order confirming said referee's report, dissolving the said corporation, * * * and appointing a permanent receiver of said corporation." In this state of facts the Court said:

"I find and report that this alleged bankrupt did, on April 23, 1903, being insolvent, apply for the appointment of a receiver, and that on April 24, 1903, because of insolvency, a receiver was put in charge of its property under the laws of the State of New York; that an act of bankruptcy was thereby committed."

Matter of Milbury Co., 11 Am. B. R. 523.

It ill becomes plaintiff in error to argue that the petition of the creditors is framed by inuendo and legal conclusions to try to evade the plain provisions of the bankrupt law and that Congress did not intend that the appointment of a receiver over a solvent corporation or made in a proceeding not based upon insolvency should be an act of bankruptcy in view of the facts shown in the record here. (Trans., pp. 5, 6, 7, 10, 11, 12, 13, 46, 47, 48, 50, 51, 52.) The facts are properly pleaded and the alleged bankrupt was insolvent as heretofore shown. The prayer of the complaint in the State Court (Trans., p. 9) "for the order of this Court, appointing a receiver herein, to take charge of the affairs of said corporation, and conduct and manage the same, with a view to its dissolution," etc., in connection with the allegations of facts clearly shows, and the Court so found, that the fact of insolvency was well

understood and that the alleged bankrupt was itself attempting to evade the bankrupt act.

The cases of *In re Perry Aldrich Co.*, 165 Fed. 249, and others like it, are all based on the other clause of section 3, subdivision 4 of the Bankrupt Act, namely, "because of insolvency a receiver or trustee has been put in charge of his property under the laws of a state, of a territory, or of the United States." In that case to commit an act of bankruptcy it is essential (a) that a receiver or trustee has been put in charge of his property, (b) because of insolvency. Obviously these cases correctly hold that the appointment of a receiver must be because of insolvency, and that fact must appear in the record and is conclusive. But such cases have no bearing on the cause at bar based on another act of bankruptcy. Congress cannot be supposed to have meant identically the same thing in setting forth the two separate acts of bankruptcy.

West Company vs. Lea, 174 U. S. 590 at 597, 598.

It requires no act whatever of the State Court, but only the application to it by the bankrupt, to make out an act of bankruptcy in the case at bar.

VIII

In view of the foregoing argument and the opinion of the United States District Court, sought to be answered in paragraph III of the brief of plaintiff in error, it is perhaps sufficient to say, that said paragraph III bears within itself its own condemnation as an argument for the plaintiff in error.

IX

It is contended that the learned trial Judge erred in holding that the Nevada Statute is essentially an insolvency act, and this contention is based upon the opinion of plaintiff in error: "Our Act of Incorporation Law has no intent of any kind of being an insolvent law, and besides the one necessary ingredient of every insolvent and bankrupt law, to wit: an assignment and transfer of his property." This opinion is completely answered by the mere reading of the statute. The authorities cited on page 44 of its brief are not in point. The case particularly relied upon of *Mayer vs. Hillman*, 91 U. S. 496, was decided in 1876, long prior to the passage of the present bankruptcy act. The discussion as to whether or not the Ohio Statute in question was a bankruptcy act was unnecessary to the decision of the case and not made the basis of the court's decision. And, finally, it goes no further than to hold that a statute which prescribes a mode by which a trust created shall be enforced, which mode is substantially such as a court of chancery would apply in the absence of any statutory provision, and which did not otherwise change the existing law, is not an insolvent law. This is obvious, but has no application to the case at bar.

X

It is contended that the verdict of the jury is outside any triable issue on the ground that the bankruptcy act denies the right to plead solvency as a defense, in answer to a petition based on subdivision 4 of section 3 of the Bankruptcy Act of 1898.

But the provisions of said act cited, beginning on the bottom of page 44 of the brief of plaintiff in error, merely sets forth certain cases where the defense of solvency is proper and in no place in any way intimates that such a defense is not proper under subdivision 4. The act of bankruptcy under subdivision 4 upon which the creditors' amended petition is based, requires two elements to constitute an act of bankruptcy: (1) insolvency of the bankrupt, and (2) the application for a receiver. This being so, both elements are properly pleaded and either or both may be put in issue by answer. Again, the authorities cited are entirely beside the mark. It is claimed that this very contention of plaintiff in error is squarely decided in *George M. West Co. vs. Lea Bros. & Co.*, 174 U. S. 590. But a reading of this case shows that the petition in involuntary bankruptcy was based upon subdivision (4) of section 3 of the Bankruptcy Act and holds only that "As a deed of general assignment for the benefit of creditors is made by the bankruptcy act alone sufficient to justify an adjudication in involuntary bankruptcy against the debtor making such deed, without reference to his solvency at the time of the filing of the petition, that the denial of insolvency by way of defense to a petition based upon the making of a deed of general assignment, is not warranted by the bankruptcy law."

This case was decided prior to the amendment of 1898. and of course has absolutely no bearing upon said subdivision (4) as amended.

This point being disposed of it carries with it and overcomes all the further arguments and authorities on pages 45 and 46 of the brief of plaintiffs in error.

It is therefore respectfully submitted that the action of the Honorable, the District Court of the United States for the District of Nevada, was correct, according to law and that the writ of error herein, and all proceedings in this Court should be dismissed.

.....*J. L. Kennedy*.....

Attorney and Solicitor for Pacific Hardware and Steel Company, Giant Powder Company, Consolidated, and J. A. Folger and Company, Petitioning Creditors, Defendants in Error.



No. 1745.

UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE NINTH CIRCUIT.

EXPLORATION MERCANTILE COMPANY (a corporation),

Plaintiffs in Error.

vs.

PACIFIC HARDWARE AND STEEL COMPANY (a Corporation), et al.

Defendants in Error.

BRIEF OF PLAINTIFF IN ERROR
ON MOTION TO DISMISS

FILED

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UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE NINTH CIRCUIT

EXPLORATION MERCANTILE COMPANY
(a Corporation),

Plaintiff in Error,

vs.

PACIFIC HARDWARE AND STEEL COM-
PANY (a corporation) et al.

Defendants in Error.

BRIEF OF PLAINTIFF IN ERROR,
ON MOTION TO DISMISS.

I.

Citation was issued by the District Court, and duly served on the Attorneys of record and service accepted, (Trans p.).

The application was in open Court, (Trans. p.).

And the lower Court had the right to issue the citation.

In re Abraham 93 Fed. 767.

Rule 11 of this Circuit.

Alaska U. G. M. Co. vs. Keating 116 Fed. 561.

Cotter vs. Alabama 61 Fed. 747.

And the rule is that when the application is made in open Court, that such is due notice.

In re Feitchel 107 Fed. 618.

Berlinger Gramophone vs. Seaman 108 Fed.
714-715.

In re T. E. Hill Co. 148 Fed. 832.

And appearance waives notice and notice is dispensed with by general appearance.

Hardy vs. Donnellan 33 Ind. 501.

Prince vs. Wallis 37 Miss. 173.

People vs. Banker 5 N. Y. 106.

Johnson vs. Tyson 45 Cal. 257.

Hale vs. People 87 Ill. 72.

Shate vs. Keyser 149 U. S. 649.

Estill vs New York 41 Fed. 849.

Consolidated, etc., vs Combs 39 Fed. 25.

And the appearance of the parties, cures all defects of notice or want of notice.

Knox, et al. vs Summer 3 Cranch (U. S.) 496.

Pierce vs. Cox 9 Wall. (U. S.) 786.

And the citation may be served upon counsel.

Walters vs. Saunders 12 Wall. (U. S.) 142.

U. S. vs. Currey 6 How. (U. S.) 106.

And the citation is not jurisdictional.

In re T. E. Hill Co. 147 Fed. 832

If a party makes a motion in the cause not limiting his appearance to a specific purpose, he will be held to have appeared generally for all purposes, and in this motion there is no limitation whatever, and a motion to dismiss is a general appearance.

Welch vs. Ayers 61 N. W. Rep. 635.

And a stipulation in a cause is a general appearance.

Keeler vs. Keeler 24 Wis. 525.

And this Defendant in Error, through J. L. Kennedy, Esq., their attorney of record, has stipulated at their request for additional papers in the cause, which stipulation is on file herein, and as the only object of notice is to give the parties the proper

opportunity to be heard in this cause— they cannot now object, after appearing and waiving notice.

II.

As to the second proposition, the officers and attorneys of the corporation are not in contempt of Court, and have duly presented their petition to review or revise the action and proceedings in that behalf to this Court, and the whole matter is in abeyance, and as will be seen by our brief in No. 1744, on the Petition to Revise, that there is no contempt and no jurisdiction in the District Court to make any order for contempt or to show cause, and further none of the appellants in error have been cited to show cause in contempt proceedings as officers of the Exploration Mercantile Company, but as Receiver of the State Court, and attorneys and agents of said Receiver, and as plaintiff in suit pending in the State Court, and attorneys for said plaintiff, and besides of a contempt, such contempt has for all the purposes of this writ been condoned and placed in abeyance by the District Court, in the fact that the Hon. Judge of that Court, has personally allowed and qualified this writ and the petition to revise. Furthermore, the Writ of Error, is a writ of right, and the right of appeal by writ of error, cannot be cut off by the **arbitrary** power of a Court, especially when the parties are acting in good faith, and also, when the **corporation** only **applies** for the writ, and contempt proceedings against an officer of the corporation, will not be a contempt proceeding **against** the corporation. There is nothing in this ground.

III.

This Court has full jurisdiction in the premises

because by law, the District Court has jurisdiction of all causes in bankruptcy. The filing of a petition in bankruptcy, whether good or bad, and proper service of process on the defendant, gives the Court jurisdiction. The absence of this class of jurisdiction—that is the inability to act at all—is the jurisdiction meant by Sec. 5 of the Act of Congress, creating Circuit Court of Appeal, wherein the words are used, “In any case in which the jurisdiction of the Court is in issue.”

But the question whether a complaint states facts sufficient to constitute a cause of action—is not the absence of jurisdiction—but the exercise of jurisdiction.

“Jurisdiction is the authority to hear and determine a cause.”

Daniels vs. Tierney 102 U. S. 418

Allegate vs. Lexington & Co. 117 U. S. 267.

Simmons vs. Saul 138 U. S. 454

Holmes vs. Oregon etc., 5 Fed. 534.

Holmes vs Oregon, etc., 9 Fed. 232.

The authority to decide a cause at all and not the decision rendered therein, is what makes up jurisdiction.

Decatur vs. Paulding 14 Pet (U. S.) 600.

Chase vs. Christiansen 41 Cal. 253.

The decision of all other questions arising in the cause is but an exercise of that jurisdiction.

Gray vs Bowles 74 Mo. 423.

“The test of jurisdiction is, whether the tribunal has the power to enter upon the inquiry, and not whether its conclusion in the course of it, were right or wrong.”

Van Fleet Coll. Attack p. 82 Ed. 1892.

This distinction is very clearly made by Justice Brewer, now of the Supreme Court of the United States in

Cooke vs Bangs 31 Fed. 640, at pages 643, 644 and 645.

This Writ is not based on the ground that the Court has no jurisdiction at all—but that the Court erred in the exercise of jurisdiction, for the reason that the creditors petition did not state facts sufficient to constitute a cause of action and therefore the Court should have sustained our motion in arrest of judgment, and this is certainly the ruling in *W. U. Tel. Co. vs. Sklar* 126 Fed. 295.

Kentucky Life Ins. Co. vs. Hamilton 63 Fed. 90.

Where on Writs of Error the Court of Appeals for the Sixth Circuit, had no difficulty in dealing with this question; so the following cases found no difficulty, in construing the right to jurisdiction.

Odell vs Boyden 150 Fed. 731.

Coles vs. Granger 74 Fed. 16.

Reliable, etc., vs. Stahl 105 Fed. 663.

Rust vs. United W. Co. 70 Fed. 129.

King vs. McLean, etec., 64 Fed. 325.

Lake Nat. B. vs W. S. B. 78 Fed 517.

Beck vs Walker 76 Fed. 10.

U. S. vs Jahn 155 U. S. 109.

Tampa S. R. R. Co. 168 U. S. 583.

And in any event, this would not be a ground for dismissal, as this Court, under the rule laid down in *U. S. vs. Jahn supra* would then certify the cause to the Supreme Court of the United States.

IV

The Writ in this cause has been amended as to the test clause, and in all other matters is perfect and under

Rule 11, of this Court.

Alaska U. G. M. Co. vs. Keating 116 Fed. 561.

Catler vs. Alabama 61 Fed. 747.
Was properly issued by the District Court.

V.

The assignments of error, certainly and clearly raise issues of law, which can be passed upon by this Court.

Western U. Tel. Co. vs. Sklar 126 Fed. 295.

Kentucky L. Ins. Co. vs Hamilton 63 Fed. 93.

Slocum vs. Pomeray 6 Cranch 221.

Bond vs Dunstan 112 U. S. 609.

Lehnon vs. Dickson 148 U. S. 71.

And the remedy pursued here is proper.

Duncan vs. Landis 106 Fed. 839.

Elliott vs. Toppner 187 U. S. 327.

The motion should be denied.

Thompson Morehouse & Thompson
Attorneys for Plaintiff in Error.

UNITED STATES CIRCUIT COURT OF APPEALS

FOR THE NINTH CIRCUIT

THE EXPLORATION MERCANTILE COM-
PANY, (a Corporation),

Plaintiff in Error,

vs.

PACIFIC HARDWARE AND STEEL COM-
PANY, (a Corporation), GIANT POWDER
COMPANY, CONSOLIDATED, (a Cor-
poration), and J. A. FOLGER AND COM-
PANY, (a Corporation), Petitioning Credi-
tors,

Defendants in Error.

No. 1745

PETITION FOR RE-HEARING

THOMPSON, MOREHOUSE & THOMPSON,

Attorneys for Plaintiff in Error.

FILED

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UNITED STATES CIRCUIT COURT OF APPEALS

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PANY, (a Corporation), Petitioning Credi-
tors,

Defendants in Error.

No. 1745

PETITION FOR RE-HEARING

TO THE HONORABLE, THE JUDGES OF THE UNITED
STATES CIRCUIT COURT OF APPEALS, FOR THE
NINTH CIRCUIT:

With the greatest respect, we present this petition and
beg the Court to reconsider its decision, upon the ground.

FIRST:

That the Court in its decision clearly overlooks and dis-
regards,

Sec. 1 of Art. IV of the National Constitution, which
reads,

“Full faith and credit shall be given in each state to the
public acts, records and **judicial proceedings** of every other
State.”

But here in this case, we have **fully set out** by the Creditors

petition, the **judicial proceeding** of the State Court, and then an attempt to set that proceeding aside, and **deny full faith and credit** to the decision of the State Court, and this Court upholds such action.

This violates this provision of the National Constitution, for as is held in

Hanley vs. Donahue, 116 U. S. I.

“Judgments recovered in one State of the Union, when proved in the Courts of another, differ from judgments recovered in a foreign country in no other respect than that of **not being re-examined** upon the merits, nor **impeachable for fraud** in obtaining them, if rendered by a Court **having jurisdiction**, of the cause and of the parties.”

There is no question, nor can there be any, but that the State Court, **had jurisdiction** of the **subject matter** and the parties. Then its judgment cannot be **re-examined** on the **merits** or **impeached for fraud**.

In McElmoyle vs. Cohen, 13 Pet. 312.

The Supreme Court of the United States says, under this Constitutional provision, “the judgment is a record **conclusive** upon the **merits**, to which full faith and credit **shall** be given.”

In Simmons vs. Saul, 138 U. S. 439.

“That a Court of Equity will not annul and set aside, on the ground of **fraud**, a decree of the Court of another State.”

Why? Because, the **fraud** is in the **exclusive** jurisdiction of the Court, rendering the decree. There it may be attacked by a **direct proceeding**, but we can not find a case, wherein a **collateral** proceeding, a **decree** can be attacked for **fraud**. Certainly the proceedings in Bankruptcy were **collateral**, and the judgment of the State Court was **binding** and **conclusive** upon the Bankrupt Court, and cannot be **impeached** upon the **merits**, nor for **fraud**.

So in the case of Kieley vs. McGlynn, 21 Wall. 503.

The Probate Court, having jurisdiction, it was held, that the will, although **alleged** to be **forged**, and probated upon **fraud**, etc., could not be attacked in a Court of Equity, because, the probate Court, could grant the relief—and that Court could only be appealed to, for as is said in,

Simmons vs. Saul, *supra*, speaking of fraud,

“These questions can be looked into and adjudicated only upon a **direct** action before the **same** Court.”

And Judge Story says,

2 Story Const. (3rd, Ed.) Sec. 1313.

“If a judgment is conclusive in the State where it was pronounced, it is equally conclusive everywhere in the Courts of the United States.”

In *Conkey vs. Russell*, 111 Fed. 417,

Where it is said, “Where the requisite diversity of citizenship to a Federal Court jurisdiction appears on the face of the bill, the jurisdiction cannot be attacked, by **evidence dehors** the record in a **collateral** proceeding by one who was not a **party** to the bill.”

So in *Hampton vs. McConnell*, 3 Wheat, 230.

The Court says, “A judgment of a State Court has the same credit, validity and effect, in every Court within the United States, which it had in the State where it was rendered.”

So in *Mut. L. Ins. Co. vs. Harris*, 7 Otto 331.

The Court says, “When a judgment or decree has been given in one State by a court having jurisdiction of the parties and the subject, it has the same force and effect **when pleaded** or offered in evidence in the Courts of any other State as in the State where it was rendered.”

Notice the Court says, “**when pleaded**” and here the petitioners plead the proceedings of the State Court, and in Nevada, the proceedings of the State Court are binding and conclusive, and as we have shown by the authorities above cited, that the **merits** of the proceedings in the State Court cannot be **re-examined**, nor **impeached** for **fraud**, it follows, that the proceedings of the State Court, are, as said in 13 Pet. 313 **supra** that that “record is **conclusive** upon the **merits**, to which full faith and credit **shall** be given.” Notice that the Constitution uses the word, “**shall**” not maybe, or can be, or might, but “**shall** be given full faith and credit.” This is **mandatory**, not permissive. The very moment then, that the petitioners, set up the proceedings in the State Court, that record became **conclusive** upon the merits, and could not be **re-examined** to contradict the **facts** in that record, and could not be **impeached** for **fraud**. Such being the case, no **averment** in the complaint, that the **facts** were not as set out in that record, or that the proceedings were **fraudulent** could overthrow that record, nor would evidence to the contrary be admissible to impeach it. It then stood as an **unimpeachable** truth, that the corporation was not Insolvent, that it did **not apply** for the appointment of a receiver. In the State Court, this would be the **force** and **effect** of those proceedings, and as Judge Marshall says, in 3.

Wheat. 230 *supra* it "would have the same credit, validity and effect, in every Court within the United States, which it had in the State where it was rendered."

But this Court in its decision, does not give it that credit, validity and effect, but violates this constitutional rule, and holds that a party may in his pleading over a different state of facts, contradict the cause on its **merits** in the State Court, and by alleging a **fraud** overthrow the action of the State Court, even though, there can be **no question**, that under the Statute of Nevada, relating to corporations, the State Court had complete, perfect and absolute jurisdiction.

Now the Courts have uniformly held, that the proceedings of the State Court must be taken as it appears upon the face of the record, as is said in,

In re Edward Ellsworth Co. Advance Sheet of Fed. Reporter, Dec. 30th, 1909, p. 699, where it is said,

"Inasmuch as the record in the Circuit Court action does not assert or claim that the Edward Ellsworth Company was insolvent, within the meaning of the Bankrupt act, this Court is **precluded from considering evidence** aliunde to contradict the decree or judgment appointing receivers and setting forth the basis of such appointment. This appears to be settled by abundant authority,

Blue Mt. Iron & Steel Co., vs. Portner, 131 Fed. 57.

In re Douglass, 131 Fed. 769.

In re Spaulding, 139 Fed. 245.

Moss vs. Arend, 146 Fed. 351.

Collier on Bank, 7th Ed. 82.

Thomkins Co. vs. Catawba Mills, 82 Fed. 780.

Now these authorities are not to be taken as simply applying to bankruptcy proceedings, "because of insolvency," as seems to us to be the ruling of this Honorable Court, but because, the **rule** as to the proceedings in the State Court, is not limited to **one class** of cases, but applies **everywhere** and **at all times**, when the proceedings of the State Court are attacked in **another Court**, and the proceeding in the State Court, becomes **conclusive** on the **merits** and **unimpeachable** for **fraud**, so that a proceeding in Bankruptcy "being insolvent" is as much bound by the action of the State Court, as "because of insolvency." Because, the record of the State Court, under the National Constitution "**shall be given full faith and credit.**" This seems too plain to need amplification. Therefore all the

averments in the Creditors Petition, attacking the proceedings in the State Court, are mere surplusage, because the records of the State Court, cannot thus be attacked, and no evidence would be admissible under such an averment—thus leaving the Creditors' petition destitute of any facts. If this is not the law, then any suit in a State Court, can set aside a judgment in the Federal Court, by simply alleging that the Creditors conspired, confederated and agreed, fraudulently and corruptly to file a petition in bankruptcy against the corporation, with the intent and purpose to ruin and destroy the corporation which was then and there through the receiver of the State Court clearing over and above \$3,000 per month for the Creditors of the corporation, and falsely, corruptly and maliciously alleged that the corporation had applied for a receiver, when in truth and fact it never did, for the reason that director and stockholder Hobbs was not in the State of Nevada, and Wiley knew nothing of the proceeding in the State Court until he was served with process and that Stone acted alone, without any consultation or knowledge of any one but his attorney, etc., and that said creditors falsely and corruptly, charged that said corporation was insolvent, when in truth and fact it was not insolvent, which said petitioners then and there knew, and by so alleging **retry** the facts tried in the Federal Court, and render its decision of no effect. To avoid just such a condition of affairs, this Constitutional provision steps in and prohibits such a proceeding, compelling each Court to give **full faith and credit** to the proceedings of the other Court. Any other judicial decision would be out of harmony with the National Constitution and the decisions of the Supreme Court of the United States, and the Federal Courts.

SECOND:

The decision of this Court is not in harmony with Judicial decision elsewhere, for as is said in,

In re Ellsworth Co. Advance Sheets of Fed. Rep. Dec. 30th, 1909, p. 699, it is said,

“Where a suit in equity was brought by creditors to wind up a corporation and for the appointment of a receiver, the bill alleging that it was **unable** to meet its obligations as they matured and that it would be to the advantage of creditors and stockholders that its affairs be wound up, but that it was solvent, the filing of an answer by the corporation, **admitting** such allegations and **joining** in the **request** for a **receiver**, dic

not constitute an "act of **bankruptcy**" under Bank. Act July 1, 1898, C. 541, Sec. 3a. (4) Stat. 546 (U. S. Comp. St. 1901, p. 3422), as amended in 1903 (Act. Feb. 5th, 1903, C. 487. Sec. 2, 32 Stat. 797) (U. S. Comp. Supp. 1907 p. 1025), which makes it an act of bankruptcy if a debtor "being insolvent" applied for a receiver or trustee for his property" nor was the appointment of a receiver in such suit made," so as to constitute an act of bankruptcy under such section."

Here the Court deals with both provisions of the Bankrupt Act, "being insolvent applied for a receiver" and "because of insolvency a receiver was appointed" and does not hesitate to say,

"A Court of bankruptcy cannot consider evidence aliunde to contradict the **recitals** of an order of a court of equity appointing receivers for a corporation, and to show, **contrary to such recitals**, that such appointment was made **because of the corporations insolvency**, and constituted an act of bankruptcy."

This case is square to the point, because there is nothing in the proceedings of the State Court, showing insolvency or that a receiver was applied for or made because of insolvency, and if the Court cannot **consider** evidence aliunde to contradict the recitals of that record, then there is no act of bankruptcy, and the decision of this Court is in square conflict with this decision.

But the Court says further. "The bankrupt Act has not superceded the right and power of a Court of Equity to take charge of the property of an insolvent corporation for the protection of stockholders and creditors, Marshall the same, recognize and enforce valid liens and priorities and equally distribute the surplus proceeds among its Creditors."

Also in In Re Southern Steel Co., 169 Fed. 702.

The facts are much stronger than in this case, because a resolution had been adopted by the Board of Directors, authorizing an attorney to consent to bankruptcy, and yet it was not an act of bankruptcy.

So in Perry Aldrich Company. 165 Fed 249
It is said, "The appointment of, receivers to take charge of property of a corporation **at suit of a stockholder** (this case) who alleged fraud and mismanagement by the officers and that the corporation was in **danger of insolvency**, but not that it was insolvent, cannot be said to have been "because of insolvency" so as to constitute an act of bankruptcy."

And in that case, the Court said, "Whether the corporation was **actually insolvent** or not when the bill was filed or the receivers appointed seems to me wholly **immaterial**, unless it can also be made to **appear** that the Court **so found**, either upon the evidence before it or the agreements of the parties and **made the fact at least one of the grounds of its action.**"

Here again, the Court will not go behind the Court record. Because **insolvency**, to become an act of bankruptcy under **any circumstances**, must be a ground upon which the Court acts. If the Court does not **act upon insolvency**, then the proceeding in the State Court, is **not** an act of bankruptcy, whether the corporation was **solvent** or **insolvent**, whether it applied for a receiver or did not apply for a receiver. The fact is, as shown by the Creditors' petition, that no **application** of any kind was made to the State Court, by reason of the **insolvency** of the corporation. It was therefore not applied for on any theory of insolvency, and certainly "being insolvent" necessarily means, that the appointment of the receiver was because of insolvency, for the appointment of a receiver is not an act of bankruptcy under any law. The bankrupt act, cannot mean anything but, that a receiver was applied for, by reason of, and on the ground of insolvency. If no application was made with insolvency as the ground of the proceeding, then the application was not an act of bankruptcy, and as we showed in our former briefs the bankrupt act is **strictly** construed.

The decision of this Court, therefore, is not in harmony with the rule laid down by other Courts.

THIRD:

This writ, it is true, is not before the Court upon the evidence in the cause, but attacks the complaint alone. And therefore this Court passes upon the case, the same as if a demurrer was being argued. It cannot **suppose** evidence or take excerpts from the opinion of the lower Court. The sufficiency of a complaint cannot be passed upon, by subsequent proceedings in a cause. The opinion of the Court, **as to facts**, is no part of the record, and particularly when the record of the State Court, cannot be contradicted, by evidence **aliunde** of the record.

And this very Court in

Mut. R. E. Life Assu. vs. DuBois 85 Fed. 586,
Held, "that the opinion of the Court, was no part of the record," and that an assignment of error could not be pre-

licated upon it. If the opinion of the Court is no part of the record, then any fact set out in said opinion, cannot be used to determine or affect the question before this Court, for such facts in said opinion is not a finding of fact, and even if it were, those facts could not be used upon the question of whether the Creditors' petition states facts sufficient. Strike from the Creditors' petition all averments contradicting the State Court record and the conclusions of law in said petition, as we have herein shown must be done, and you have nothing left, but the proceedings in the State Court, and we have shown in our brief on file herein, that the State law of Nevada, will not permit a corporation to file a complaint for the appointment of a receiver, and as our brief on file herein, shows by numerous and undisputed authority, that a corporation cannot apply for the appointment of a receiver, unless a law authorizing it, we have the strange situation, that the Creditors claim a thing to be done, which cannot be done and which was not done, and yet this Honorable Court upholds this remarkable situation, upon the theory that a Court of Equity will declare that to be done, which was not done, and which could not be done by a corporation, and that too in a **collateral attack**—not in a **direct** proceeding.... We can find **no authority** to sustain this position, after careful investigation, either in Courts of law or equity. The corporate entity has never been used for any purpose. A single stockholder authorized by law and no one else commenced proceedings in the State Court. It was not a corporate act. It could not under any circumstances be a corporate act. It was beyond the power of the corporation, and being beyond the power of the corporation, it could not be **ratified** and become a corporate act, and no Court of Equity can **twist** it into a corporate act."

Besides the Statute of Nevada cannot be used to **defraud** creditors. It is an equitable statute, because one of the cardinal rules of Equity is "Equality is Equity." It simply prevents one creditor by attachment, from obtaining a **preference**. All are put on an equality. It prevents the waste of the estate, and thwarts the mismanagement of the corporate affairs. No creditor is injured. The assertion in the petition that it was to evade the bankrupt law, is a **false** statement, for the reason, it prohibits the corporation from filing a voluntary petition in bankruptcy.

SEC. 4, BANKRUPT ACT.

If a corporation cannot file a petition in bankruptcy, how

could it **evade** the bankrupt Act? Evade, means to get away, avoid, elude. Could it anticipate a petition in bankruptcy? Certainly not. Why? Because a corporation, **can only** be put in bankruptcy **when it** commits **an act** of bankruptcy.

SEC. 3 BANKRUPT ACT.

It matters not how **insolvent** it may be, it can not of its own accord file a petition in bankruptcy, nor can it be put in bankruptcy, because it is insolvent. It therefore cannot evade the law. It cannot take any action with **intent** to violate the bankrupt act. Such averments in the petition, and such reasoning in this Honorable Court's opinion, are entirely unwarranted, because it **must commit** an Act of bankruptcy before proceedings can be taken against it.

Therefore the allegation in the petition, "And would evade the provisions of the laws of the United States in reference to bankruptcy, and prevent said creditors from obtaining a knowledge of the true condition of said corporations affairs or from having or participating in the choice of a person or persons to act as trustee of said corporation or its property" is simply false, both in law and in fact, for had no complaint been filed in the State Court, no proceedings could have been taken against it, in the bankrupt Court, because there would not have been an act of bankruptcy and therefore the proceedings in the State Court, cannot be for any such purpose, for not being an act of bankruptcy, it does not evade the bankrupt law, and if an act of bankruptcy, then no creditor has a right to complain.

But suppose, it **was** done, which we deny, "for the purpose of hindering, delaying and defrauding Creditors," that is not an **act** of bankruptcy, under the bankrupt law. The bankrupt law, only makes the hindering, delaying and defrauding Creditors, an element of bankruptcy, when the **Act** of bankruptcy is charged under sub. 1-A Sec. 3. Bankrupt Act. Here the charge is not under that sub-division, and the **intent** with which the proceeding was taken does not create an act of bankruptcy.

In Re Varock Bank 119 Fed. 991.

In Re Wilmington H. Co. 120 Fed. 180.

View this petition from any point and it utterly fails to state an act of bankruptcy, under the Bankrupt Act.

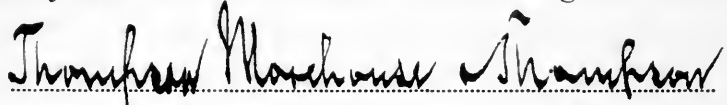
FOURTH:

In conclusion we beg to call the Court's attention, to the serious results of this decision. Here was a going corporation

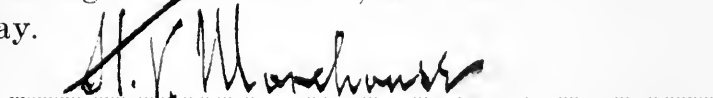
in the hands of the State Court, where every creditor under the State law was fully protected. A receiver under a heavy bond, conducting the business successfully to the advantage of creditors. Every creditor had his day in Court. If the receiver was not satisfactory they could move to have one of their own. But in steps a few creditors, enjoins the State Court receiver, closes down the business, ruins the corporation, reduces the value of its assets, destroys the value of its stock, puts it to expense of preserving the property without income, while waiting all these long months for a correct interpretation of the law. If the estate is dissipated, who has dissipated it? What becomes of the State law? Is it repealed? It is not an insolvent law, but a law relating to corporations. Nevada has a separate Insolvent law. The corporation cannot apply in bankruptcy. It does not wish to avoid its debts, but wants to pay them. It cannot be put in bankruptcy because in debt. The only relief is the State law. A stockholder asks that relief. The law provides it. It commits no act of bankruptcy, so far as the proceedings in the State Court is concerned. It cannot apply as a corporation in the State Court. The law will not permit it. But now we are told that the act of a single stockholder, is the act of the corporation. We know the corporation cannot act, and therefore cannot confer the power on any one else to act for it. And what it cannot do, **they say it did do.** We earnestly insist, that there is no law, no judicial decision, no cases in equity, which can uphold this decision. The importance of this question, in view of the fact, that it is not in harmony with the National Constitution, nor with the decisions of other Courts, that it virtually sets aside the State law, that it gives an interpretation to the Bankrupt Act not given by any other Court, and from the further fact, that no corporation in Nevada, is safe from the spoliation of its property, and the utter ruin of the value of its corporate stock, and the destruction of its business, if it happens to be in debt, and a stockholder exercises his right under the Nevada law, if such **act**, is an **act of bankruptcy.** By bankruptcy, the corporation is at once ruined, its business suspended, its officers enjoined, and its assets dissipated. Under the State law it is protected. No creditor loses. Its business continues. Its mismanagement corrected. Bankruptcy destroys, while the State law preserves. We therefore, with great respect, ask this Court, to re-consider its decision, and give the plaintiff in error a re-hearing of this cause, and if doubts exists in the

minds of this Honorable Court, as to the true meaning and construction, of that part of the bankrupt law, realting to "being insolvent, applied for the appointment of a receiver, etc," that it certify the question to the Supreme Court of the United States, that we may have a settled interpretation, for the future guidance of all Courts and litigants.

We respectfully ask this Honorable Court to grant this our petition.


.....
Attorneys for Plaintiffs in Error.

I hereby certify, that in my judgment, that the foregoing petition for re-hearing is well founded, and that it is not interposed for delay.


.....
Of Counsel for Plaintiff in Error.



IN THE
United States Circuit Court of Appeals
NINTH CIRCUIT

EXPLORATION MERCANTILE COM-
PANY, a Corporation,

Plaintiff in Error,

vs.

PACIFIC HARDWARE AND STEEL
COMPANY, a Corporation, THE GIANT
POWDER COMPANY, CONSOLI-
DATED, a Corporation, and J. A. FOL-
GER AND COMPANY, a Corporation,
Petitioning Creditors.

Defendants in Error.

REPLY TO PETITION FOR REHEARING

J. L. KENNEDY,

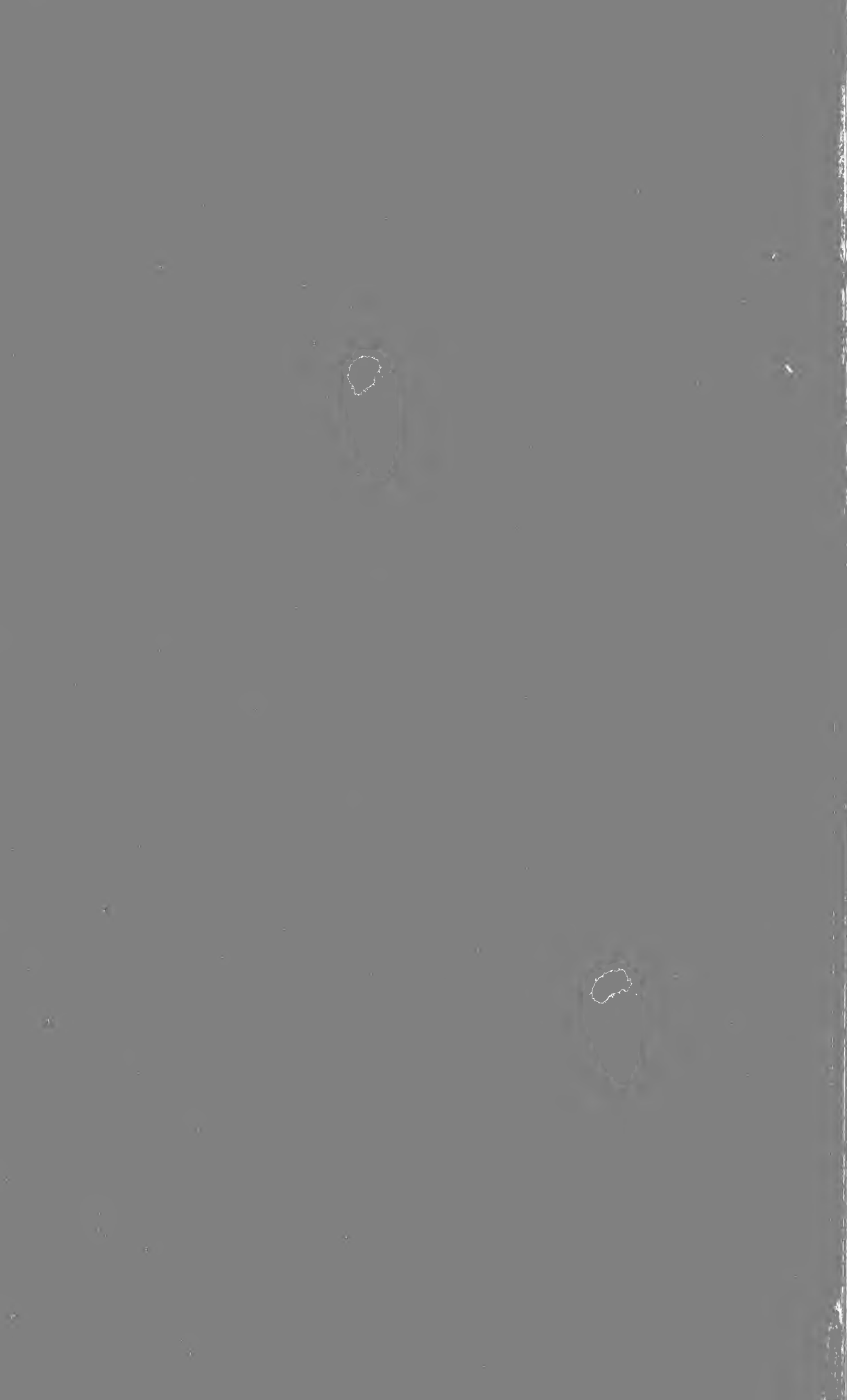
Attorney for Defendants in Error.

Filed this.....day of.....1910

F. D. MONCKTON, Clerk.

By.....Deputy Clerk.

FILED
1910



No. 1745.

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REPLY TO PETITION FOR REHEARING.

The defendants in error respectfully submit the following in reply to the petition for rehearing of plaintiff in error.

I.

The full faith and credit clause of the Constitution of the United States, Article IV, Section 1, is of no greater force than is Article I, Section 8, Subdivision 4, and the Courts have uniformly held that the bankruptcy courts have exclusive jurisdiction.

Brief of defendants in error herein, pages 12, 13
and 14.

The State Court did not have jurisdiction.

Golden vs. Averill, 101 Pac. 1201.

II.

The decision is in harmony with judicial decisions elsewhere.

“If the company, while insolvent, had voluntarily brought an action to wind up its affairs for the benefit of its creditors, and had applied for the appointment of receivers to take charge of its property, the superior right of the bankruptcy court could not safely be questioned.”

In re Edward Ellsworth Co., 173 Fed. 699.

See also

Matter of Milbury Co., 11 Amer. B. R. 523.

III.

The amended petition alleges that the initial application to the State Court was the act and deed of the corporation. It therefore requires no supposed evidence or excerpts of the lower court to support it.

IV.

Attention is called to the opinion of the lower court as a better statement of the facts of this case than those in the petition intended to support the argument with reference “to the serious results of this decision.”

Trans., pp. 46-53 inclusive.

The request

“If doubts exist in the minds of this Honorable Court, as to the true meaning and construction, of

that part of the bankrupt law, relating to 'being insolvent, applied for the appointment of a receiver, etc.,' that it certify the question to the Supreme Court of the United States, that we may have a settled interpretation, for the future guidance of all Courts and litigants",

is made too late. If such right is claimed it should be called to the attention of the Court in advance of decision.

Rule XXXVI, Subd. 3, General Orders in Bankruptcy;
 Knapp vs. Milwaukee Trust Co., 20 Amer. B. R. 671, 673, 162 Fed. 675, 677.

Furthermore, the language of the Bankruptcy Act is too plain to require further settlement. "Being insolvent" applied for the appointment of a receiver" can only require two essentials, first, the insolvency of the bankrupt, second, application for the appointment of a receiver upon any ground whatsoever.

It is therefore respectfully submitted that the petition for rehearing should be denied.

J. L. Kennedy
 J. L. KENNEDY,

Attorney and Solicitor for Defendants in Error. 0207



